



Decision

Matter of: Seawolf Construction Corporation

File: B-405730

Date: December 21, 2011

Antonio P. Franco, Esq., and Ryan C. Bradel, Esq., PilieroMazza PLLC, for the protester.

Ciara C. Young, Esq., Woolford Law, PC, for Cedar Electric, Inc., the intervenor.

Kate Gorney, Esq., Department of Veterans Affairs, for the agency.

Peter D. Verchinski, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

An awardee's failure to provide a price for an additive contract line item did not render the awardee's bid nonresponsive, where, consistent with the invitation for bids, the agency's award did not include that additive item.

DECISION

Seawolf Construction Corporation, of Jersey City, New Jersey, protests the award of a contract to Cedar Electric, Inc., of Lititz, Pennsylvania, under invitation for bids (IFB) No. VA-244-11-IB-0176, issued by the Department of Veterans Affairs (VA), for construction services. Seawolf argues that Cedar's bid was nonresponsive, because the awardee failed to provide a price for each of the IFB's contract line items (CLINs).

We deny the protest.

BACKGROUND

The IFB provided for the award of a contract for the construction of a new residential rehabilitation and treatment wing at the VA Medical Center in Lebanon, Pennsylvania. The solicitation included CLINs for the "base bid" item and five "alternate" items, for which bidders were to submit prices. The base bid (CLIN 0001) consisted of the construction of the new wing, while the alternate items consisted of various additions, such as metal roofing (CLIN 0002), balustrades (CLIN 0004), and dormers for the central building (CLIN 0005). The IFB stated that award

would be based on the lowest price for the base bid plus “any combination of the alternate items (CLIN 0002 to CLIN 0007).” IFB at 6. In this regard, the IFB stated

[t]he Government shall have the right to accept alternates in any order or combination, and to determine the low bidder on the basis of the sum of the Base Bid . . . plus accepted alternates (CLIN 0002 to CLIN 0007). The low bidder will be the offeror that is otherwise eligible for award and offers the lowest Base Bid plus accepted alternate items.

Id.

In response to the IFB, the VA received the following bids from Seawolf and Cedar:

	Seawolf	Cedar
BASE BID ITEM		
CLIN 0001	\$2,489,000	\$1,919,500
ALTERNATE ITEMS¹		
CLIN 0002	\$121,000	\$42,200
CLIN 0004	\$9,000	\$6,000
CLIN 0005	\$85,000	N/A
CLIN 0006	\$500	\$1,500
CLIN 0007	\$9,000	\$9,200
TOTAL PRICE	\$2,713,500	\$1,978,400

Agency Report (AR), Tab 8a, Abstract of Bids.

The agency determined that it had mistakenly included CLIN 0005 in the IFB, because this work (dormers for the central building) had already been awarded under a prior contract.² Contracting Officer’s Statement at 1-2. The agency decided to award a contract for the base bid and four remaining alternate items to Cedar, as the bidder with the lowest overall price for these items (\$1,978,400 as compared to Seawolf’s \$2,628,500). Award was made to Cedar, and this protest followed.

¹ The IFB did not include CLIN 0003.

² Cedar was the awardee for the previous construction work, and thus the firm was aware that the agency had mistakenly included CLIN 0005 here. Contracting Officer’s Statement at 2.

DISCUSSION

Seawolf argues that the agency was required to reject Cedar's bid as nonresponsive because the awardee did not price CLIN 0005. Seawolf cites in this regard our decisions in The Jorgensen Forge Corp., B-255426, Feb. 28, 1994, 94-1 CPD ¶ 157 and Propper Mfg. Co., Inc., B-245366, Dec. 30, 1991, 92-1 CPD ¶ 14. We find no merit to the protester's argument.

To be responsive, a bid must represent an unequivocal offer to comply with the IFB's material terms. Federal Acquisition Regulation § 14.404-2. Where a solicitation includes a base bid and various additive items, bids must be evaluated on the basis of the work actually awarded. Jones Floor Covering, Inc., B-237139, Jan. 5, 1990, 90-1 CPD ¶ 25 at 3. Thus, a bid which fails to include prices for some items should be rejected only if evaluation and award include the items not bid. The Haskins Co., B-227898, Sept. 21, 1987, 87-2 CPD ¶ 285 at 2; Fletcher & Sons, Inc., B-212530.2, Dec. 13, 1983, 83-2 CPD ¶ 678 at 3-4. Here, Cedar's failure to submit a price for CLIN 0005 did not render the bid nonresponsive because, consistent with the terms of the solicitation, the agency decided not to award CLIN 0005.

Our decisions in The Jorgensen Forge Corp. and Propper Mfg. Co., Inc. are inapposite to the situation presented here. In Jorgensen Forge, the solicitation stated that the basis for award would be the aggregate sum of all CLIN prices, which included base and option items. We found that the agency properly rejected a bid that did not price all option items because without these prices the agency would be unable to exercise those options. Our decision in Propper did not involve a bidder's failure to price alternative bid items. Rather, that case concerned a bidder's failure to identify the name of its manufacturer in a brand name or equal procurement.

The protest is denied.

Lynn H. Gibson
General Counsel