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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Croman Corporation

File: B-409496

Date: April 29, 2014

Alan I. Saltman, Esq., and Stephen J. Kelleher, Esq., Smith Currie & Hancock LLP, for the protester.

Stephanie Magnell, Esq., Department of the Army, for the agency.

Kathleen A. Gilhooly, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

An agency properly rejected as nonresponsive the protester's low bid that failed to provide required line item prices for an option year; correction of the bid is not permitted where the bid, as submitted, did not establish a consistent pattern of pricing that establishes the intended price for the omitted items.

DECISION

Croman Corporation, of White City, Oregon, protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. W911S8-13-B-0001, issued by the Department of the Army for aerial fire suppression. Croman contends that its bid is responsive, despite failing to include all required pricing information, because the agency could have ascertained its intended prices from the bid's pattern of pricing.

We deny the protest.

BACKGROUND

The IFB, issued as a small business set-aside, contemplated the award of a fixed-price contract for aerial fire suppression at Joint Base Lewis-McChord-Yakima Training Center in Washington for a base year and 4 option years. Bidders were required to price four contract line items (CLIN) in each of the contract years. The IFB informed bidders that "[t]he price for the base year will be added to the total

price for all options to determine the lowest priced bid.” IFB at 114. The IFB further provided that:

As part of price evaluation, the Government will evaluate its option to extend services . . . by adding one-half of the [bidder’s] final option period price to the [bidder’s] total price. Thus, the [bidder’s] total price for the purpose of evaluation will include the base period, 1st option, 2nd option, 3rd option, 4th option, and ½ of the 4th option. [Bidders] are not required to enter a price for the six-month period.

Id.

Croman submitted the apparent lowest-priced bid, \$5,614,640, at bid opening. Croman’s bid, however, was missing three pages of section B, and thus Croman did not submit prices for the four CLINs for the fourth option year, and did not provide the total rolled-up prices for each contract year. The contracting officer informed Croman that its bid appeared incomplete and nonresponsive, “which would result in the bid being rejected.” Contracting Officer’s (CO) Statement at 3. Subsequently Croman acknowledged that its bid was missing three pages (the fourth year CLIN pricing and the extended base and option year pricing) but contended that the agency should permit Croman to correct this mistake because its bid showed a clear pattern of pricing. Agency Report, Tab 7, Croman Letter to CO, at 1.

The CO decided that Croman’s bid should be rejected as nonresponsive, and this protest followed. Award has not been made pending resolution of the protest.

DISCUSSION

Croman argues that, although its bid did not include prices for all CLINs, the agency should nevertheless have found its bid responsive because its intended price could be ascertained from the bid’s pattern of pricing. Specifically, Croman states that: with respect to two CLINs, Croman’s prices for the CLINs were the same for all periods; with respect to a third CLIN, Croman’s price for each CLIN increased by the same fixed amount in each contract period; and with respect to the fourth CLIN, Croman’s prices in each contract period were annually escalated by approximately the same percentage factor. Protest at 3-4. Croman requests that we allow it to correct its bid to supply the missing pricing, and asserts that its total bid, as intended, would be approximately \$750,000 lower than the second low bidder. Protest at 6-7.

To be responsive, the bid as submitted must represent an unequivocal offer to comply with the IFB’s material terms, which include the requirement for a fixed-price. Cooper Sportswear Mfg. Co, Inc., B-238998.5, Sept. 18, 1990,

90-2 CPD ¶ 225 at 2. As a general rule, a bid must be rejected as nonresponsive if, as submitted, it does not include a price for every item requested by the IFB. GTA Containers, Inc., B-249327, Nov. 3, 1992, 92-2 ¶ 321 at 2. The requirement for fixed prices extends to options where, as here, the IFB requires bidders to price the option services and provides that the agency will evaluate such prices in making award. Upside Down Productions, B-243308, July 17, 1991, 91-2 CPD ¶ 66 at 2. Failure to submit prices for the option year leaves the bidder with no obligation to perform any of the option services at any particular price. Areawide Servs., Inc., B-240134.4, Sept. 4, 1990, 90-2 CPD ¶ 182 at 2.

A bid that fails to price every required item may nevertheless be responsive where the bid itself establishes a pattern of pricing. This limited exception allows correction where the bid, as submitted, indicates the possibility of error, the exact nature of the error, and the intended bid price. See Childrey Contract Servs., Inc.; Orkin Exterminating Co., B-258653, B-258653.2, Feb. 9, 1995, 95-1 CPD ¶ 60 at 4; Wellco Enters., Inc., B-237512, Feb. 20, 1990, 90-1 CPD ¶ 196 at 3. Thus, bidders have been permitted to provide omitted prices where the missing price was for an item that was elsewhere consistently priced in the bid, see Telex Commc'ns, Inc.; Mil-Tech Sys., Inc., B-212385, B-212385.2, Jan. 30, 1984, 84-1 CPD ¶ 127 at 5; or where the identical price was provided for the base and another option year. See Con-Chen Enters., B-187795, Oct. 12, 1977, 77-2 CPD ¶ 284 at 2.

As an initial matter, Croman's failure to return the pricing schedule for the fourth option year calls into question whether Croman has obligated itself to perform for the fourth option year, an essential requirement for this bid to be responsive. See Areawide Servs., Inc., *supra*. In any event, unlike the situation presented in Telex Commc'ns, Inc.; Mil-Tech Sys., Inc., *supra*, at 5, and Con-Chen Enters., *supra*, at 2, Croman's bid, as submitted, does not establish a uniform pattern of pricing for all CLINs, such that the intended bid prices can be ascertained for all CLINs. Specifically, with respect to one of the fourth option year CLINs (for which Croman asks a \$1.4 million correction), the corresponding line items in the base and other option years are not identically or consistently priced. Rather, as Croman acknowledges, the prices for these CLINs were escalated by rates that varied in each contract year.¹ Furthermore, because Croman's bid also failed to provide

¹ Croman argues, citing United Food Servs., B-218228.3, Dec. 30, 1985, 85-2 CPD ¶ 727, that, although the pattern of pricing for this CLIN was "not one of absolute precision," it should be allowed to correct the price omission because its intended price could be ascertained "within a narrow range." See Protest at 5. Our decision in United Food Servs. is inapposite. In United Food Servs., we stated that a protester should be allowed to waive a failure to price all items, where the bid, as submitted, established the intended price within a narrow range and the bid would have been the lowest. United Food Servs., *supra*, at 4. We did not find that the protester in that case should be allowed to correct its price omission. *Id.* at 4-5.

(continued...)

rolled-up prices for the base and option years, it is not possible to derive Croman's intended price for this CLIN. Under these circumstances, Croman's bid was properly rejected as nonresponsive.

The protest is denied.

Susan A. Poling
General Counsel

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Croman does not ask to waive its bid mistake here, only to correct its price omission.