



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D. C. 20548

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B-178827

September 17, 1973

Danzansky, Dickey, Tydings, Quint & Gordon
Suite 1010 Bender Building
1120 Connecticut Avenue, N.W.
Washington, D. C. 20036

Attention: Jack Rephan, Esq.

Gentlemen:

Your letter of July 17, 1973, on behalf of Keyser Roofing Contractors, Inc., protests against the proposed award of contract No. GS-00B-01323 to Bay Service Co., under an invitation for bids (IFB) issued by the General Services Administration (GSA), Public Buildings Service, Washington, D. C., covering a new tile roof for the United States Post Office and Courthouse, Richmond, Virginia.

For the reasons stated below, the protest is denied.

In addition to the new tile roof project which is the subject of your protest, the IFB solicited bids for two other renovation projects on Federal buildings (under one of which bidders could also submit a separate price for installation of equipment). The IFB permitted prospective bidders to submit a lump-sum price for performing all three projects, including installation of equipment. Award could be made on the basis of the lowest combination bid received or individually to the three low bidders on each project, depending on lowest cost to the Government and available funding.

Bay Service submitted the low bid for the new tile roofing project in the amount of \$224,000, while Keyser was the third low bidder at \$312,067. George K. Jenson Constructors, Inc., submitted prices on the other two projects and installation of equipment of \$3,555,000, \$1,927,000, and \$2,000. Also, Jansen quoted \$300,000 for the new tile roof and a lump-sum bid of \$5,782,000. The only other bidder on the other two projects was Bay Service who bid \$50,000,000, \$50,000,000, \$50,000,000, and a lump-sum bid of \$150,000,000.

You contend that the Bay Service bid should be rejected as nonresponsive because the submission of grossly overstated prices for

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projects other than the new tile roof violated the IFB's Instructions to Bidders which required a "no bid" submission in these circumstances.

The Instructions to Bidders to which you are referring appears to be section 5(b) which reads as follows:

"* * * When submission of a price on all items is not required, bidders should insert the words 'no bid' in the space provided for any item on which no price is submitted."

At this point, we note that Bay Service did not bid \$50,000 for one of the two projects other than new tile roofing as you allege, but \$50,000,000. Therefore, we will confine our discussion to the alleged gross overstatement of prices by Bay Service on those projects.

We have no information concerning the rationale behind the submission by Bay Service of its quotes for the other projects and a lump-sum bid of \$150,000,000. It is true that the prices would appear to be grossly overstated when compared to the bid prices of Jenson for those projects which were eventually accepted for award. There is no prohibition in the IFB against the submission of grossly overstated prices even assuming that the bidder intended to submit such prices. The penalty suffered by a bidder who submits grossly overstated and, therefore, unreasonable prices is simply failure to receive an award. This is exactly what occurred here. However, where, as here, award can be made for an individual item for which a bidder submits a low, reasonable price, there is no authority or justification to reject that portion of the bid as nonresponsive because of an intentional overstatement of prices on other items. Even if Bay Service was required to insert a "no bid" for the items, the Instructions to Bidders does not preclude an award on another item for which the bidder has submitted the lowest, reasonable price.

Your telegram of June 5, 1973, and subsequent letters dated June 6 and July 17, 1973, protest another aspect of this procurement. By way of background, the new tile roofing project has been the subject of two prior IFB's. The only bid submitted in response to the first IFB, issued in October 1972, was rejected as being unreasonable as to price. Bid opening under the second IFB, which occurred in February 1973, established Keyser as the lowest of four bidders at \$367,012. The Government estimate for the project was \$175,000. By letter dated March 28, 1973, all bidders, including Keyser, were advised by GSA that all bids were rejected as unreasonable and the project was being readvertised. On April 27, 1973, the instant IFB was issued containing the new tile roofing project. Keyser

apparently was under the mistaken impression that it was precluded from bidding on the new tile roofing project alone because of the combination of projects.

On May 22, 1973, Keyser met with a GSA representative in conjunction with a reevaluation of its bid to determine whether it was unreasonable as to price under the second IFB. Keyser alleges that it was informed that it could submit a separate bid for the new tile roofing project at this meeting for the first time. Your letter of June 6 states that the GSA representative admitted that the \$175,000 Government estimate for the project was incorrect. In this regard, GSA reports to our Office that the estimate was revised upward to \$200,400 before the issuance of the instant IFB. Your June 6 letter also states that the GSA representative informed Keyser, in effect, that the bids would be received and considered under the instant IFB. Bid opening took place on May 30, 1973, and Keyser, the third low bidder, protested through your firm as counsel, to our Office on June 5, 1973.

The protest concerns the alleged arbitrary and capricious decision of the contracting officer to cancel the second IFB. You contend that the revised Government estimate is erroneous and, if correctly computed upward, would make the low Keyser bid on the second IFB reasonable as to price. In the alternative, you argue that if the second IFB is not reinstated, the new tile roofing portion of the instant IFB should be awarded to Keyser.

This protest will not be considered by our Office since it was filed untimely. The Interim Bid Protest Procedures and Standards of our Office (4 CFR 20.2(a)) require that bid protests be received in our Office not later than 5 working days after the basis for the protest is known, or should have been known. Here, over 2 months prior to the protest, Keyser's low bid was rejected along with the bids of three others on the basis of price unreasonableness. Not until almost 1 month after the issuance of the instant IFB did Keyser undertake to meet with the contracting agency on the matter. And, Keyser did not protest here even though informed by a GSA representative at that meeting on May 22, 1973, that bids would be reviewed and opened under the instant IFB. It was not until after bid opening under the instant IFB that Keyser protested here. At the very latest, Keyser should have filed its protest, not received here until June 5, 1973, within 5 working days after that May 22, 1973, meeting, or May 30, 1973.

Sincerely yours,

Paul G. Donbling

For the Comptroller General
of the United States