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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: ATR Logistic Company LLC

File: B-402606

Date: June 15, 2010

Abel T. Rodriguez for the protester.

Charles L. Webster III, Esq., Department of the Army, Corps of Engineers, for the agency.

Paula J. Haurilesko, Esq., Jonathan L. Kang, Esq., and Guy R. Petrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly rejected the protester's low bid, where, although the protester acknowledged an amendment to the solicitation, it used the original bidding schedule that did not include pricing for contract line items added by the amendment.

DECISION

ATR Logistic Company LLC, of Plano, Texas, protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. W9126G-10-B-0001, issued by the Department of the Army, Corps of Engineers, for mail and messenger services.

We deny the protest.

The IFB provided for the award of a contract for mail and messenger services in Dallas and Fort Worth, Texas, for a base year and four option years. IFB at 2-6. A performance work statement (PWS) was provided that detailed the specifications for performing these services. Among other things, bidders were informed that mail and messenger services would be provided for a number of federal agencies at two locations: the Earle Cabell Federal Building in Dallas and the Fritz G. Lanham Federal Building in Fort Worth. PWS at 7.

Bidders were required to provide unit prices for each contract line item number (CLIN) on the bid schedule. *Id.* at 115. As originally issued, the bid schedule contained a base year CLIN and four CLINs for the option years; each of the five CLINs contained two sub-CLINs for the services to be provided to the Dallas and

Fort Worth mailrooms, respectively. Id. at 2-6. The PWS specified that mail service would be provided for the Corps and the Department of Education at the Earle Cabell building. Id. at 7. The IFB provided that deliveries and pickups would begin at 10 a.m. and 2 p.m., Monday through Friday. Id. at 26.

The Corps issued amendment 1 to the IFB to require mail service at a third location, Bryan Tower. This amendment revised the bid schedule to add a third sub-CLIN for Bryan Tower to each CLIN and the PWS to specify that mail service for the Department of Education would be provided at Bryan Tower instead of the Earle Cabell building. The amendment also added Bryan Tower to the Mail Point Schedules and list of Mailroom Pickup and Drop Off Spots. IFB amend. 1, at 3-8. In addition, the amendment specified that deliveries and pickups for Bryan Tower were to begin at 1 p.m., Monday through Friday; deliveries and pickups for the Dallas and Fort Worth federal buildings remained at 10 a.m. and 2 p.m., as stated in the original IFB. Id. at 28. The IFB as originally issued and as amended cautioned bidders that “[a]ccuracy and timeliness are of primary importance.” IFB at 26; IFB amend. 1, at 28.

The Corps received eight bids, including ATR’s low bid. Contracting Officer’s (CO) Declaration ¶ 4. ATR’s bid included a signed letter that acknowledged receipt of amendment 1 and stated that the bidder would provide mail service to Bryan Tower. Agency Report (AR), Tab 8, ATR Bid Response Letter, at 13, 20. The protester’s bid, however, used the original bid schedule, instead of the amended schedule. ATR Bid at 2-6. As a result, the protester’s price reflected an amount for each CLIN based on two, rather than three, sub-CLINs. Specifically, ATR’s bid schedule did not include sub-CLINs for the mail service at Bryan Tower. Additionally, the protester’s bid stated that mail service would “begin from the Mail Center at 10:00 a.m. and 2:00 p.m.,” but did not address the revised requirement that mail runs from Bryan Tower must begin at 1 p.m. See id. The CO rejected ATR’s bid as nonresponsive for failing to include pricing for Bryan Tower in its bid sheet. Id. ¶ 8.

ATR does not dispute that it failed to provide a price breakdown for providing mail services to Bryan Tower. However, ATR argues, citing its letter that stated it would provide mail service to Bryan Tower, that its bid nonetheless was responsive because its bid committed it to comply with all the terms and conditions of the solicitation.

To be considered for award, a bid must comply in all material respects with the IFB and should be filled out, executed, and submitted in accordance with the instructions on the invitation. Federal Acquisition Regulation (FAR) § 14.301(a), (d). A bidder can bind itself to the contents of some amendments merely by acknowledging receipt of the amendments; however, when a bidder, despite acknowledging an amendment, otherwise creates doubt as to its commitment to perform pursuant to the amendment, its bid must be rejected. Lamb Eng’g & Constr. Co., B-261240, Aug. 25, 1995, 95-2 CPD ¶ 87 at 3. If a bidder uses its own bid form or a letter to submit a bid, the bid may be considered if (1) the bidder accepts all the

terms and conditions of the invitation and (2) award on the bid would result in a binding contract with terms and conditions that do not vary from the terms and conditions of the invitation. FAR § 14.301(d).

The record shows that ATR's bid did not conform to the IFB in two areas. First, although ATR acknowledged amendment 1, the omission of the pricing for Bryan Tower as provided in the revised bid schedule created doubt as to whether ATR agreed to all of the terms of amendment 1. ATR's bid did not identify a price for providing mail and messenger service to Bryan Tower in either the bid schedule or in the bid response letter. Also, although ATR indicated in its bid response letter its intention to provide mail services to Bryan Tower--e.g., on the first two pages, the Mail Point Schedules, and the list of Mailroom Pick-Up and Mail Drop Off Spots--it failed to indicate that it would comply with all of the terms and conditions of the amended IFB. Specifically, the protester's bid did not commit to begin the mail run for Bryan Tower at 1 p.m., as required by amendment 1. Instead, the protester stated that mail runs would begin at 10 a.m. and 2 p.m., which was the requirement under the initial IFB for the other locations. IFB amend. 1, at 28; AR, Tab 8, ATR Bid Response Letter, at 12.

ATR argues that its failure to include a price breakdown for mail service for Bryan Tower is a minor informality that the agency should allow the protester to correct because ATR's price for this mail service would be only \$5,444.40, or 0.0063 percent of its bid.¹ Protest at 2.

A minor informality is one that is merely a matter of form and not of substance. FAR § 14.405. A contracting officer should waive a defect in a bid as a minor informality if the defect is immaterial and if waiver will not be prejudicial to other bidders. TECOM, Inc., B-236929.2, May 11, 1990, 90-1 CPD ¶ 463 at 3. A defect is immaterial if the effect on price, quantity, quality, or delivery is negligible when contrasted with the total cost or scope of the services being acquired. Id. However, where it is apparent that the requirement is material for reasons other than the effect on price it is not necessary to determine whether or not the price impact is negligible. MTC Indus. & Research Carmiel, Ltd., B-227163, Aug. 18, 1987, 87-2 CPD ¶ 174 at 5.

Here, we find that the requirement for mail service for Bryan Tower is not immaterial. As noted above, the IFB clearly identified the accuracy and timeliness of mail pickup and delivery at each location as being of primary importance--thus denoting a material requirement of the contract that cannot be waived. ATR's bid, however, did not commit to the pickup schedule required for Bryan Tower under amendment 1.

¹ ATR did not provide this pricing information until it appeared in the letter filing this protest, and ATR's protest does not break out the prices for Bryan Tower according to base and option years.

ATR also argues, in the alternative, that its bid should have been understood to have included a fully priced commitment to provide mail services to Bryan Tower. In this regard, the protester argues that the original solicitation required mail service for two federal buildings, as well as a third “off-site” location for the Department of Education. Protester’s Comments at 1. Thus, the protester contends, the initial IFB already required mail services to a third site, and the protester’s failure to provide pricing for the third sub-CLIN, as required in amendment 1, did not affect the requirement for the contractor to provide mail services for three locations. We disagree. The initial IFB clearly referred to two federal buildings, one of which, the Earle Cabell Federal Building, contained the Department of Education facility; the initial IFB did not state that there was a third “off-site” location. The requirement for mail service to a third location, Bryan Tower, was first included in amendment 1-- which, as discussed above, required offerors to provide separate sub-CLIN pricing, and which the protester did not address in its bid.

Furthermore, to the extent that ATR argues that its bid in fact included pricing for mail and messenger service for Bryan Tower, we disagree. A bidder’s intention must be determined from the face of the bid itself and evidence submitted after opening to show a bidder’s intent may not be considered. Newfield Constr., Inc., B-286912, Feb. 6, 2001, 2001 CPD ¶ 21 at 4. A nonresponsive bid cannot be made responsive by explanations after bid opening. J. D. Bertolini Indus., Ltd., B-231598, Sept. 14, 1988, 88-2 CPD ¶ 245 at 3.

In sum, ATR’s failure to include prices for the sub-CLINs to provide mail service to Bryan Tower as required by amendment 1, and its failure to commit to the required schedule, created doubt as to ATR’s intention to fulfill all of the terms and conditions of the amended IFB.

The protest is denied.

Lynn H. Gibson
Acting General Counsel