



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Hamilton Pacific Chamberlain, LLC

File: B-409208.2

Date: April 3, 2014

Griffin Hamilton, for the protester.

Tony A. Ross, Esq., Department of Veterans Affairs, for the agency.

Paul N. Wengert, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is denied where, although low bidder failed to bid on alternate item that was not selected for award by the procuring agency, low bidder submitted valid bid for base item actually awarded, and its bid was therefore responsive.

DECISION

Hamilton Pacific Chamberlain, LLC, doing business as HPC, LLC, of Waldorf, Maryland, a small business, protests the award of a contract to BES Design/Build, LLC, of Fairhope, Alabama, by the Department of Veterans Affairs (VA) under invitation for bids (IFB) No. VA245-13-B-0272 for construction services at the VA Medical Center in Martinsburg, West Virginia. HPC argues that the VA should have rejected the bid submitted by BES as nonresponsive.

We deny the protest.

BACKGROUND

The VA issued the IFB on July 22, 2013, seeking bids to renovate Building 415B at the VA Medical Center. The IFB was set aside for service-disabled, veteran-owned small businesses (SDVOSB).

Before bids were due, the VA issued five amendments to the IFB. As relevant to the protest, amendment 2 modified the statement of work and established two bid line items, among other things. As amended, line item 1 remained the base bid line item, while the new line item 2 was expressly labeled as an “alternate” deductive item. The line 1 base bid provided for the renovations of the building, while the

line 2 alternative item provided for a change to the scope of work by “remov[ing] the wheelchair lift at stair landing and associated infrastructure for its operation” and continuing a guardrail across the area where the lift would have been. IFB amend. 2 at 4. Other than that change, both line items had the same scope of work and performance period. Id.

The VA received 15 bids. Upon opening and reviewing the bids, the contracting officer noted that BES Design/Build, LLC was the apparent low bidder, but its bid had only a single price for line item 1, and no price for line item 2. Agency Report (AR), exh. 1, Contracting Officer’s Memorandum to File, at 1. The contracting officer then rejected the bid from BES Design/Build as defective and nonresponsive, and announced award would be made to HPC. Id.

BES Design/Build, LLC then filed a protest with our Office, arguing that since line item 2 was a deductive alternative, the failure to provide a price for it was not a material defect because the VA could award either the full or the lesser/deductive scope of work at the same price. The VA took corrective action, announcing that it would rescind the rejection of the BES bid, and would proceed to consider it for award. Id. at 2. As a result, we dismissed BES’s protest as academic.

The VA then announced award of the contract to BES Design/Build, LLC, whereupon HPC filed this protest.

ANALYSIS

HPC argues that the bid submitted by BES Design/Build, LLC was nonresponsive, and should have been rejected because it did not provide a price for both line item 1 and the alternate line item 2. Protest at 10. The VA argues that it correctly concluded that the bid from BES Design/Build, LLC was not defective because the failure to submit a price for an alternative line item that the agency does not award does not render a bid nonresponsive.¹ AR at 5.

This Office recently considered essentially this same situation, and held that a bidder’s failure to bid on an alternate item that was not selected for award does not, in itself, render the bid nonresponsive. Povolny Group, B-407570, Jan. 9, 2013, 2013 CPD ¶ 26 at 3. Where a solicitation includes a base bid and alternatives, bids must be evaluated on the basis of work actually awarded. See, e.g., Niemela

¹ The second-lowest and third-lowest bids were also rejected for failure to submit a price for line item 2. Although the presence of these intervening bids might otherwise prevent HPC from being an interested party, they do not here because those bids also had the same alleged flaw that HPC argues was present in BES Design/Build’s bid. AR at 4. Thus, if HPC is correct, it is an interested party to challenge all three lower-priced bids on effectively the same basis.

Constr. Co., B-237616, Feb. 7, 1990, 90-1 CPD ¶ 161 at 2. Failure of a bidder to offer a price for all alternates will constitute a basis for rejection only if evaluation and award includes the items not bid. This is true even where the IFB states that failure to bid on every item will cause rejection of the bid as nonresponsive. Haskins Co., B-227898, Sept. 21, 1987, 87-2 CPD ¶ 285 at 2.

Here, the bid submitted by BES Design/Build, LLC unequivocally offered to perform the base requirement, which is what the VA actually awarded.² Accordingly the bid was responsive, and provided a proper basis for the award of a contract.

The protest is denied.

Susan A. Poling
General Counsel

² Although HPC also argues that the BES Design/Build bid did not acknowledge all amendments, or otherwise took exception to the specifications, HPC has provided no factual support for these claims. Protest at 10; Protester's Comments at 2. While the bid from BES Design/Build did not provide a price for line item 2, the BES bid expressly acknowledged all five amendments by identifying the number and date of issuance of each. AR, exh. 5, BES Design/Build Bid, at 2. Accordingly, HPC has shown no evidence that BES did not commit to comply with the terms of the IFB.