

Proc I

DECISION



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

10,134

FILE: B-193731

DATE: May 11, 1979

MATTER OF: Kleen-Rite Corporation

[Protest of Provisions in IFB]

DIGEST:

1. Protester contends that IFB was not clear whether bidder should enter monthly or semiannual unit price for service to be performed semiannually. Contracting agency evaluated bids on assumption that unit price entries for service were semiannual. Protest is denied, since protester has not shown that it was prejudiced by alleged ambiguity. There is no evidence in record that any bidder's unit price was on monthly basis. Further, even if low bid is evaluated on such basis, it remains lower than protester's. p
2. Absent advice from contracting agency to contrary, bidders must assume that bids will be opened as scheduled in IFB. Contracting agency need not confirm that fact merely because it has been advised by bidder that protest alleging improprieties in IFB is being filed with GAO. p 5
3. Contracting agency's failure to notify protester that it intends to award contract prior to GAO resolution of protest, pursuant to authority in DAR § 2-407.8 (1976 ed.), does not affect legality of award.

DLG 01580
 Invitation for bids (IFB) No. DABT59-79-B-0011 was issued on November 29, 1978, by the Department of the Army for custodial services at Fort Lee, Virginia, from January 1 through December 31, 1979. Bid opening was scheduled for December 20, 1978.

In a letter to our Office dated December 13, Kleen-Rite Corporation (Kleen-Rite) protested

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four provisions in the IFB. On December 14, Kleen-Rite informed the contracting officer of the contents of the letter and that it intended to add by telegram a fifth basis of protest involving IFB item 0001AG.

Both communications were received in our Office on December 18. Kleen-Rite subsequently withdrew the protest as filed in the December 13 letter. Accordingly, only the issue raised in the telegram is before us for consideration.

The IFB's technical specifications described the required custodial tasks in five groups arranged by the frequencies with which the tasks were to be performed: daily, weekly, monthly, semiannually and annually. The IFB also listed six "Schedules," each describing a different service location, its area and the frequency that it required service. For example, schedule A-1 listed over 100 buildings by number and square footage that required service five nights per week; schedule B-1 listed eight buildings by number and square footage where twice-weekly night service was involved. The schedule frequencies were two, five or seven items per week. A bidder would refer to the technical specifications to determine the services contemplated in the schedules.

Section "E" of the IFB appeared substantially as follows:

"Supplies/Services and Prices

* * * * *

"0001 Providing services as listed for each schedule with the exception of Semi- Annual Tasks.	TOTAL EST QUANTITY PER SCHEDULE	UNIT PRICE PER SQ FT PER MONTH
"0001AA Schedule A-1	933,339 sq ft	\$ _____
"0001AB Schedule A-2	138,821 sq ft	\$ _____
"0001AC Schedule B-1	23,675 sq ft	\$ _____
"0001AD Schedule B-2	29,178 sq ft	\$ _____
"0001AE Schedule C	40,569 sq ft	\$ _____
"0001AF Schedule D	8,500 sq ft	\$ _____
"0001AG Strip and re wax floors	963,000 sq ft	\$ _____
"0002 Perform Annual Tasks on Schedules listed below.		
"0002AA Washing of light fixtures	14,356 ea	\$ _____
"0002AB Dusting of light fixtures	14,356 ea	\$ _____
"0002AC Washing of venetian blinds	4,984 ea	\$ _____
"0002AD Dusting of venetian blinds	4,984 ea	\$ _____
"0002AE Wash windows and door glass	154,000 sq ft	\$ _____

The contract was to be awarded to the responsive, responsible bidder whose bid was lowest in the aggregate for all items. To determine the low bidder, the contracting officer first multiplied by 12 the extended prices (square feet x unit price per square foot) for items 0001AA through 0001AF, which she assumed were bid on monthly bases. She then added twice the extended price for item 0001AG, a semiannual task, and the extended prices for the annual tasks, items 0002AA through 0002AE. After taking the bidders' offered discounts into consideration, Amcor, Inc., was determined to be the low bidder at \$557,844.39. Kleen-Rite's evaluated bid was \$754,183.33, the highest received.

Item 0001AG, "Strip and rewax floors," was to be performed semiannually and therefore was not a schedule service. Kleen-Rite contends that the structure of section "E" appears to require the entry of a unit price per square foot per month for the task. Therefore, Kleen-Rite suggests that "bidders are not on an equal bidding basis, since some bidders computed the unit price on a monthly basis, and others included in that unit price the cost to perform said work semiannually." We assume that Kleen-Rite means that the bidders cannot be sure whether for evaluation purposes a unit price entry for item 0001AG would be multiplied by two or by 12 and the different bidders' entries therefore may have depended upon different assumptions as to the multiplication factor. In this connection, Kleen-Rite specifically stated in its proposal that the firm's entry for the item was a semiannual one.

In a report on the protest, the Army concedes that the subject task should have been listed separately as were the annual tasks (items 0002AA-0002AE). However, the Army argues that all bidders were aware that item 0001AG entries were to be evaluated as semiannual unit prices. The Army points out that the task was clearly described in the IFB as semiannual and that the statement next to item No. 0001 references the provision of services "as listed for each schedule with the exception of Semi-Annual Tasks." The Army

suggests that no bidder was actually confused by the structure of section "E" or expected its unit price entry for item 0001AG to be evaluated as a monthly price.

Notwithstanding whether the structure of section "E" of the IFB potentially may have confused some bidders, no one other than Kleen-Rite complained about the evaluation and there has been no showing that Kleen-Rite was prejudiced in the competition. Even assuming that Amcor's item 0001AG entry was intended to be a monthly unit price per square foot (it was evaluated as a semiannual one), the firm's bid would still have been lower than the protester's as the latter was in fact evaluated. Accordingly, we see no basis to interfere with the contract award. Tennessee Valley Service Company--Reconsideration, B-188771, September 29, 1977, 77-2 CPD 241.

failed to

In addition to the matter discussed above, Kleen-Rite has expressed concern with the Army's handling of its protest. Kleen-Rite points out that it raised its objection regarding item 0001AG with the contracting officer on December 14 and the contracting officer was aware that a protest was being filed in our Office on the matter before bid opening. However, the contracting officer opened bids as scheduled on December 20 without having expressed to Kleen-Rite the Army's position on the protest, and award was made to Amcor before resolution of the protest by our Office without prior notice to Kleen-Rite. The protester suggests that the contracting officer should at least have advised the firm that the IFB would not be amended and bids would be opened as scheduled and that award would be made notwithstanding the protest. GAO

Absent any advice from the contracting agency to the contrary, a bidder must assume that bids will be opened as scheduled in the IFB. The agency is not required to confirm that fact merely because it has been advised that a protest is being

filed with the General Accounting Office. In fact, we have stated that where a protest alleging improprieties in an IFB is filed with the contracting agency prior to bid opening, the opening of bids without taking any corrective action may in itself constitute initial adverse agency action within the meaning of the timeliness rules of our Bid Protest Procedures, 4 C.F.R. part 20 (1978). See M & M Services, Inc., B-193066(3), December 26, 1978, 78-2 CPD 434.

In addition, the contract was awarded before resolution of the protest pursuant to the authority of Defense Acquisition Regulation (DAR) § 2-407.8(b)(3) (1976 ed.). The regulation requires the contracting officer to give written notice to the protester of the decision to proceed with the award, which apparently was not done here. However, this procedural failure to comply with the notice requirement does not affect the legality of a contract award. See New Haven Ambulance Service, Inc., 57 Comp. Gen. 361 (1978), 78-1 CPD 225; B-178303, June 26, 1973.

The protest is denied.


Deputy Comptroller General
of the United States