Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: D.B.I. Waste Systems, Inc.

File: B-285049

Date: July 10, 2000

Spencer C. Demetros, Esq., for the protester.
Merilee D. Rosenberg, Esq., Department of Veterans Affairs, for the agency.
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DIGEST

Agency improperly rejected as nonresponsive a low bid that acknowledged all amendments to an invitation for bids (IFB) for refuse removal services and used amended bid schedule but provided a combined flat-rate entry for hauling and disposal charges, rather than separate line item prices as called for by the amended bid schedule, where the bid commits the contractor to perform in accordance with the precise IFB requirements at an evaluated total price that is low under all plausible circumstances.

DECISION

D.B.I. Waste Systems, Inc. protests the rejection of its bid as nonresponsive and the proposed award of a contract to Waste Systems International, Inc. under invitation for bids (IFB) No. 523-17-00, issued by the Department of Veterans Affairs (VA) for refuse removal services at certain facilities within the VA Boston Healthcare System. The agency rejected D.B.I.'s bid as nonresponsive for failure to include separate line item prices as called for under the amended bid schedule.

We sustain the protest.

The IFB, issued February 2, 2000, provided for the award of fixed-price requirements contracts for refuse removal services at three Boston-area facilities including one facility in Boston, one in West Roxbury and one in Brockton, each for a 6-month base period with three 1-year options. IFB amend. 1, Revised Bid Schedule, at 2-17.

The IFB provided for either a single award or multiple awards and permitted bidders to bid on one, two or all three of the facilities. IFB at 31. Award(s) would be based upon the aggregate price for the base and option periods for each facility. Id.

Under the solicitation as initially issued, the bid schedule divided the work to be performed into a total of 148 contract line items (CLIN) for the three facilities for the base period and each option period. IFB, Original Bid Schedule, at 2-17. Each CLIN included estimated requirements for the particular work specified. As relevant here, the work required for the Boston facility was divided into nine CLINs for the base and each option period.[1] Id. One CLIN requested a monthly and extended price for the rental of a hydraulic lift. Under each of four other CLINs, bidders were to provide a monthly and extended price for the rental of a large pull-away refuse container. Under each of the remaining four CLINs, bidders were to insert unit and extended prices per "pull" per container, with monthly estimated quantities provided.[2] Id.

Certain prospective bidders complained about the requirement to submit a price per pull for the larger pull-away containers on the basis that pricing per pull is inconsistent with industry practice, and that they would not be able to accurately price their bids. Specifically, because they had to pay disposal fees on a price-per-ton basis, while the agency asked for a price per pull, they indicated that they would have to bid each pull on the assumption that the containers were full. Contracting Officer's Statement at 1.

In response, on February 15, the VA issued amendment No. 1, which revised the bid pricing schedule. Id. Instead of having one CLIN for the rental fee and one CLIN for the price per pull for a container, the revised pricing schedule had one CLIN per container within which there were sub-CLINs calling for bidders to separately insert a rental fee, a price per pickup for hauling the refuse, and a price per ton for disposing of the refuse. IFB, amend. 1, Revised Bid Schedule, at 2-17.

The amended bid schedule for the Boston facility contained five CLINs for the base and each option period. Four of the CLINs listed the size and location of a pull-away container and the service schedule for that container and included three sub-CLINs calling for bidders to enter a unit and extended rental fee, a hauling charge, and a

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[1] This protest concerns only the separate proposed award for the Boston facility.

[2] A "pull" refers to the process of picking up a full pull-away container and replacing it with an empty one. Contracting Officer's Statement at 1 n.1.

disposal charge for that container. Id. at 2. The pricing structure for each container was as follows:

Service	Estimated Quantity	Unit	Unit Price	Total
Rental Fee	6	Month	$_____	$_____
Hauling Charge	100	Each	$_____	$_____
Disposal Charge	639	Tons	$_____	$_____

Id.

Using historical data provided by the incumbent contractor, the agency estimated that the Boston facility would require the removal of 1,353 tons of refuse for the base period and 2,705 tons for each option period. Based on this data, the agency estimated that it would require 255 hauls in the base period and 490 hauls in each option period for a total of 1,725 hauls. Contracting Officer's Statement at 1; IFB amend. 1, Revised Bid Schedule, at 2-17. Of the four pull-away containers at the Boston facility, one was to be serviced three times per week, another was to be serviced every weekday, and the other two were to be serviced upon request. IFB amend. 1, Revised Bid Schedule, at 2-17.

Of the seven bids received for the Boston facility, D.B.I.'s total evaluated bid of $517,500 represented the lowest price; Waste Systems' bid of $947,750 was next low. Contracting Officer's Statement at 2. Although D.B.I. acknowledged amendment No. 1 and submitted its prices on the amended bid schedule, its bid did not follow the amended pricing format. Specifically, D.B.I. did not enter separate prices for the hauling charge and the disposal charge. Rather, under each CLIN, D.B.I. inserted a "0" charge for the rental fee for the pull-away containers and a "flat rate" of "$300 PER HAUL INCL. DISP. CHG.," as one entry that covered the hauling charge and disposal charge sub-CLINs. Agency Report, exh. 4, D.B.I. Bid, at 2-17. The flat $300 rate was the same for all sub-CLINs relating to refuse removal for the base and all option periods. D.B.I. also inserted a "0" charge for the rental of the hydraulic lift, which was a separately listed CLIN. Id.

By letter dated March 18, Waste Systems protested to the VA that D.B.I.'s bid was unacceptable because it did not comply with the revised bid schedule. Agency Report, exh. 5, Waste Systems International, Inc. Protest, at 1. The contracting officer sustained Waste Systems' protest and eliminated D.B.I.'s bid from further consideration. By letter dated March 30, the agency notified D.B.I. that, because its bid did not include a rental fee, hauling charge and disposal charge as required by the bid schedule, its bid was nonresponsive and would not be considered for award. Agency Report, exh. 7, Notification of Nonresponsive Bid, at 1. This protest followed.

D.B.I. argues that its use of a flat rate pricing scheme is a minor informality which does not render the bid nonresponsive since it acknowledged the amendment, submitted its prices on the revised bid schedule, and is bound to perform all the services required under the solicitation. Protester's Comments at 9. D.B.I. argues that, given the substantial margin in price between its bid and the next low bid, "there can be no dispute that D.B.I.'s bid would be the lowest bid in all circumstances . . . ." Id. at 10. We agree.

A bid is responsive as submitted when it offers to perform without exception the exact thing called for in the solicitation and acceptance of the bid will bind the contractor to perform in accordance with all of the IFB's material terms and conditions. Mike Johnson, Inc., B-271943, Aug. 14, 1996, 96-2 CPD ¶ 66 at 2; Inland Serv. Corp., B-249590, Dec. 7, 1992, 92-2 CPD ¶ 394 at 3. In particular, a bid such as D.B.I.'s, which uses lump sum prices rather than separate prices as called for under a bid schedule which contains lines for separate pricing entries is responsive where there is no ambiguity as to the bidder's legal obligation to perform as required by the solicitation. Inland Serv. Corp., supra, at 3. A lump-sum bid submitted in place of a line-item bid is responsive where it merely reflects a firm's agreement to perform the contract work for a single lump-sum price. Mike Johnson, Inc., supra, at 3. This kind of "irregular" price entry renders the bid unacceptable only where it results in benefits to the bidder which were not extended to all bidders by the IFB. If the irregularity is prejudicial to other bidders, then the bid should be rejected as nonresponsive. Valix Fed. Partnership I, B-250686, Feb. 1, 1993, 93-1 CPD ¶ 84 at 4.

Here, D.B.I. acknowledged all amendments and submitted its prices on the revised bid schedule. Its pricing entries clearly bound it to perform all the work required by the solicitation, since D.B.I.'s bid specifically noted that its flat rate per haul included disposal charges. D.B.I.'s pricing in this respect is functionally equivalent to the entry of "NSP" ("not separately priced") or "N/C" ("no charge") notations, which we have found express the bidder's affirmative intent to obligate itself to provide the item at no charge to the government and therefore do not provide a basis to reject a bid. Kasco Fuel Maintenance Corp., B-274131, Nov. 22, 1996, 96-2 CPD ¶ 197 at 4. D.B.I.'s bid entries for the hauling and disposal charges simply combine the two sub-CLIN requirements and indicate that the disposal charge sub-CLIN is not separately priced but is included in the price for the hauling charge sub-CLIN. Thus, contrary to VA's assertion, D.B.I.'s pricing format does not, by itself, require the rejection of the bid as nonresponsive for failure to comply with a material IFB requirement.

The agency also argues that D.B.I.'s pricing format gave the protester an unfair advantage relative to other bidders, essentially on the basis that the bid is not necessarily low even though it appears to be. Agency Report at 3. While the agency believes that the estimated tonnage is correct because it is based on historical data, it hypothesizes that its estimate of the number of required hauls may be understated. The agency points out that, if it requires additional hauls with no change in the tonnage of refuse being removed, the agency would have to pay more under D.B.I.'s

flat $300 rate than under Waste Systems' prices since Waste Systems' hauling charge was only $125 and its disposal charge was $72.50 per ton. Supplemental Agency Report at 2. The VA contends that D.B.I.'s pricing format thus capitalizes on the possibility that the agency will need more hauls than the estimated quantity and that D.B.I.'s prices will no longer be low if the agency estimate for the number of hauls required is understated. Id.

Our Office requested that the agency support this position by providing an explanation and calculations using the protester's and Waste Systems' prices which demonstrate under what circumstances D.B.I.'s total price would be higher than Waste Systems' price. The agency has not supplied any such calculations. Our comparison of the pricing shows that the protester is correct that, because of the significant disparity between the prices, it is implausible that D.B.I.'s prices could result in a total price that is higher than Waste Systems'. In the scenario most favorable to the agency's position, the actual tonnage will remain consistent with the IFB estimate, while the number of hauls will rise above the estimate. In these circumstances, for each additional haul actually required by the agency, D.B.I. will charge the government its flat rate of $300; Waste Systems will charge the government its hauling rate of $125, a difference of $175 per haul. Using these figures, the agency would have to require 2,459 additional hauls above the estimate of 1,725 hauls for 9,465 tons of refuse for the base period and all option periods before D.B.I's low $517,500 price plus the added $300 hauls would exceed Waste Systems' $947,750 price plus the added $125 hauls.[3] The additional number of hauls required before D.B.I.'s price would be higher than Waste Systems' price so far exceeds the requirements contemplated by the agency in the IFB that it is unreasonable to assume that D.B.I.'s price could exceed Waste Systems' price.[4] Accordingly, the agency has not identified any plausible situation in which D.B.I.'s bid would not be low, nor any benefit that may accrue to D.B.I. because of its bidding scheme that is prejudicial to the other bidders. Since there is no doubt that D.B.I.'s bid would be low in all plausible circumstances, and D.B.I.'s obligated to satisfy all contract requirements, the VA improperly determined that D.B.I.'s

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[3] The 2,459 additional hauls figure equals the $430,250 price differential divided by the $175 per haul price difference.

[4] If, in fact, the agency anticipated such a significant increase in the required number of hauls or lacks any basis to establish that the solicitation's estimated number of hauls is realistic and reflects the government's actual anticipated needs, the solicitation is fundamentally flawed because firms were not provided a reasonable basis on which to prepare their bids, and the government cannot accurately determine which bid will actually result in the low overall cost to the government. If that is the case, then the requirement should have been canceled and resolicited using more realistic estimates. Beldon Roofing & Remodeling Co., B-277651, Nov. 7, 1997, 97-2 CPD ¶ 131.

insertion of lump-sum prices rather than separate line item prices rendered the bid nonresponsive.

We sustain the protest because the agency did not have a valid basis for finding the protester's bid nonresponsive. We recommend that the agency award the contract to D.B.I., if otherwise appropriate. In addition, we recommend that the protester be reimbursed its costs of filing and pursuing the protest. 4 C.F.R. § 21.8(d)(1) (2000). The protester should submit its certified claim, detailing the time expended and costs incurred, directly to the contracting agency within 60 days of receiving the decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

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