



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: BFI Medical Waste Services

File: B-266354

Date: January 29, 1996

Richard L. Moorhouse, Esq., Dorn C. McGrath III, Esq., and Ross W. Dembling, Esq., Holland & Knight, for the protester.

Garrett L. Rassing, Esq., and Cynthia Guill, Esq., Department of the Navy, for the agency.

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DIGEST

When a bidder does not bid based on the precise quantity, measurement, or volume called for in the invitation for bids, the bid must be rejected as nonresponsive unless the intended price for the proper quantity, measurement, or volume can be determined from the face of the bid or the effect of the deficiency on the price of the bid is clearly de minimis and waiver would not be prejudicial to other bidders.

DECISION

BFI Medical Waste Services protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. N68925-95-B-A498, issued by the Department of the Navy for medical waste removal and disposal services at various medical facilities within the jurisdiction of the Navy Public Works Center in Washington, D.C.

We deny the protest.

The IFB contemplated the award of a combination fixed-price/indefinite quantity contract for the pickup and disposal of medical waste and replacement containers at numerous specified medical facilities. Contract line item (CLIN) No. 0001 comprised the fixed-price portion of the contract, and CLIN No. 0002 comprised the indefinite quantity portion of the contract, for scheduled and unscheduled pickup and disposal of medical waste, respectively. Each CLIN consisted of two sub-line items, one for medical waste to be incinerated, and one for medical waste to be sterilized. Bids were requested on an "all or none" basis.

Section B of the solicitation contained two pricing schedules, one for each CLIN and its respective sub-line items. For each sub-line item, the schedules listed a maximum quantity of medical waste, using pounds as the unit of measure. In accordance with section B.2, bidders were required to enter unit and extended prices for each sub-line item, as well as a total price for each CLIN and a total price for both CLINs. Section M.2.a. of the IFB informed bidders that the failure to submit a bid for all items and quantities listed would cause rejection of the bid.

The Navy received four bids, including one from BFI. The section B pricing schedule in BFI's bid listed a total price for CLIN No. 0001 and a total price for both CLINs in the spaces reserved for such prices. However, the firm did not insert unit or extended pricing for any of the sub-line items or the total price for CLIN No. 0002. Instead, in the spaces reserved for such pricing, BFI had typed "***SEE PRICING SCHEDULE**". A separate pricing schedule, attached to BFI's bid, listed each of the medical facilities covered by the IFB, along with corresponding entries under three columns: rate, number of boxes per year, and extended dollar amount.

Although BFI's total price for both CLINs was apparently the lowest received,¹ the Navy rejected the firm's bid as nonresponsive because it did not complete the pricing schedules in section B and the information in its separate pricing schedule did not clearly indicate whether the firm intended to bid for each item, and because BFI's pricing schedule put into question what the firm intended to bid for each item.² BFI contends that its pricing schedules contained sufficient information for the Navy to determine that BFI bid on all of the requirements and the prices it intended to bid.

To be responsive, a bid must represent an unequivocal offer to provide the exact thing called for in the solicitation such that acceptance of the bid will bind the contractor to perform in accordance with all of the solicitation's material terms and conditions. J.C. Adams, Inc., B-252132, May 18, 1993, 93-1 CPD ¶ 394. A bid also must be rejected as nonresponsive if it is ambiguous regarding the actual price the government would be obligated to pay upon acceptance of the bid. Municipal Leasing Sys., Inc., B-242648, B-242648.2, May 21, 1991, 91-1 CPD ¶ 495. When a bidder does not bid based on the precise quantity, measurement, or volume called

¹BFI's total price for both CLINs was \$278,185, and the second low bidder's was \$311,373.

²The Navy also rejected BFI's bid as nonresponsive because the firm attached an addendum allegedly taking exception to the IFB's economic price adjustment clause. Because we find that the Navy properly rejected BFI's bid as nonresponsive on the basis of its pricing schedule, we need not decide whether this addendum also rendered the bid nonresponsive.

for in the IFB, the bid must be rejected as nonresponsive unless the intended price for the proper quantity, measurement, or volume can be determined from the face of the bid, Hooven Allison-Recon., B-224785.2, Mar. 6, 1987, 87-1 CPD ¶ 257; Tabco Prods., Inc., B-222632, Aug. 27, 1986, 86-2 CPD ¶ 231, or the effect of the deficiency on the price of the bid is clearly de minimis, and waiver would not be prejudicial to other bidders. Hooven Allison-Recon., *supra*.

Here, even assuming that the information in BFI's bid was sufficient to show its intent to be bound to perform, its pricing schedule introduces an ambiguity as to price, requiring its rejection as nonresponsive. While the solicitation expressly notified bidders that prices were being solicited on a per pound basis, BFI's bid did not provide prices on a per pound basis.

BFI argues that its per pound price for each CLIN can be calculated by simply dividing each total CLIN price identified in its bid by the sum of the total estimated pounds for the two sub-line items. However, BFI's bid expressly referenced its own attached pricing schedule instead of including the requested sub-line prices on a per pound basis for each sub-line item, and this pricing schedule—which contains separate rates for each site—does not use pounds as its unit, but boxes, thus preventing the Navy from determining whether BFI was bidding on the precise quantity in pounds called for in the IFB.³ Therefore, we do not agree that BFI's intended sub-line items pricing can be calculated in the manner now argued by BFI.⁴

Alternatively, BFI asserts that its intended per pound unit prices for the sub-line items can be calculated from its attached pricing schedule, which BFI claims clearly defines a box as containing an average of 20 pounds of waste, thereby allowing for a straightforward conversion from the quoted per box unit price prices into per pound unit prices. We disagree.

Of the 25 locations listed on the pricing schedule, only one—Sugar Grove—is followed by an asterisk. The bottom of the schedule contains three asterisked

³We note that while the unit of measure column is labeled boxes per year, the rate column lists rates per pound for four locations with no explanation as to whether the numbers in the boxes per year column for those locations refer to boxes or pounds, introducing yet another ambiguity.

⁴While BFI has submitted its worksheets to explain its intentions here, to permit a bidder to explain its bid after bid opening would be tantamount to improperly allowing a bidder to have the unfair competitive advantage of choosing to accept or reject the contracts after bids were exposed. B&C Indus., Inc., B-244471.4, Oct. 7, 1991, 91-2 CPD ¶ 314.

sentences: "*Sugar Grove location will be serviced through BFI's 5 gallon container mail disposal service program"; "*Ground service is available for this location at an increased rate"; and "*Rates based on an average of 20 pounds per container over a month's time." While BFI argues that this last sentence defines the poundage contained in all of the boxes on the schedule, we see no reason to infer that these asterisked sentences apply to any location except Sugar Grove, the one asterisked location. See Williams and Lane, Inc., 63 Comp. Gen. 23 (1983), 83-2 CPD ¶ 482. Indeed, since the Sugar Grove location is to be serviced through BFI's 5 gallon mail disposal service program, it would seem most probable that the 20-pound average referred to here applies only to this container. At a minimum, the schedule makes it ambiguous whether all boxes for all locations contain 20 pounds, and this prevents a conversion of BFI's pricing into a unit which would allow evaluation of all bidders on a common basis. Hooven Allison-Recon., *supra*; cf. Artisan Builders, 65 Comp. Gen. 240 (1986), 86-1 CPD ¶ 85 (where square foot unit prices were readily convertible to required linear foot unit prices).⁵ In view of BFI's failure to bid based on the unit of measure specified in the IFB, and our resulting inability to conclude that the failure had a *de minimis* effect on its price, we conclude that BFI's bid was nonresponsive. Hooven Allison-Recon., *supra*; Tabco Prods., Inc., *supra*; see J.D. Bertolini Indus., Ltd., B-231598, Sept. 14, 1988, 88-2 CPD ¶ 245.

The protest is denied.

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⁵In addition, the final sentence on BFI's pricing schedule (just below the three asterisked sentences) states that, "Failure to meet such minimums may subject the customer to an additional charge." This sentence, which appears to refer to the Sugar Grove location, clearly states that BFI might charge the Navy an undefined amount over and above what it has bid under certain conditions.