



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: SAE Americon Mid-Atlantic, Inc.

File: B-244212; B-244212.2

Date: September 26, 1991

Carter B. Reid, Esq., Watt, Tieder, Killian & Hoffar, for the protester.

Ruth E. Ganister, Esq., Rosenthal and Ganister, for Boro Developers, Inc., an interested party.

Robert C. Mackichan, Jr., Esq., and Manual B. Oasin, Esq., General Services Administration, for the agency.

Jacqueline Maeder, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protester could not reasonably assume that agency would not evaluate options where a solicitation which erroneously included an award provision calling for evaluation of price on the basis of the base year plus alternates also contained provisions expressly providing that option year prices would be evaluated; the solicitation block calling for entries of the prices for the work required contained blanks for option year prices and required the entry of a total bid price including these option prices, and the protester's representatives had attended a pre-bid conference at which the agency stated that option prices would be evaluated to determine the low bid.

2. To the extent that the solicitation may have been unclear on its face as to the evaluation of options, the protester should have sought clarification from the agency, or filed a protest contesting the evaluation clauses before the bid opening date.

DECISION

SAE Americon Mid-Atlantic, Inc. (SAE) protests the award of a contract to Boro Developers, Inc. under solicitation No. GS-03P-91-CDC-0007, issued by the General Services Administration (GSA) for the construction of a courthouse annex and related long-term elevator maintenance services

in Camden, New Jersey. SAE asserts that the agency failed to evaluate bids in accordance with the evaluation provisions set forth in the solicitation.

We deny the protest.

The solicitation, issued on February 15, 1991, required bidders to enter prices for a base bid for the construction of a 170,000 square foot courthouse annex, three alternates and three 3-year option periods for elevator maintenance services.

The Basis of Award section at page 79 of the solicitation included General Services Administration Regulation (GSAR) § 552.236-73, Alternate II, which states in relevant part:

"The low bidder for purposes of award is the responsible bidder offering the lowest aggregate price for (1) the base bid (consisting of the lump sum bid and any associated unit price bids extended by the applicable number of units shown on the bid form) plus (2) those alternates in the order of priority listed in the solicitation that provide the most features of work within the funds available at bid opening."

In a separate section at page 1019 in Volume II, titled "Important Information about the Elevator Maintenance Contract," the solicitation states that:

". . . a [9] year maintenance contract, consisting of three (3) option periods, each being [3] years long, is a part of this solicitation and will be evaluated for award."

The specifications for elevator maintenance also included Federal Acquisition Regulation (FAR) § 52.217-5, Evaluation of Options, which states that:

"Except when it is determined in accordance with FAR 17.206(b) not to be in the [g]overnment's best interests, the [g]overnment will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. Evaluation of options will not obligate the [g]overnment to exercise the option(s)."

A pre-bid conference which was held on March 13, was attended by two SAE representatives. The conference was transcribed and copies of the transcript were made available to all attendees. At this conference, an agency contracting official

explained the contemplated method for evaluating alternates and options under the solicitation and stated that: "elevator maintenance options will be evaluated as part of your bid to determine whether you are the low bidder."

Ten bids were received by the April 30 bid opening date. After bid opening, SAE sent several letters to the agency concerning the evaluation of bids and expressing its belief that under the Basis of Award provision, options should not be evaluated; therefore, SAE was the low bidder and was entitled to the award. GSA responded on several occasions and specifically in an undated letter received by SAE on May 23, GSA explained that it disagreed with SAE's interpretation, and had determined that SAE's bid was not low. GSA computed the total of the base bid, the alternates and the options, and determined that Boro was the apparent low bidder. GSA awarded the contract to Boro on May 23, and SAE protested to our Office on May 24.

SAE argues that the agency improperly included the options in calculating the low bid. SAE contends that the solicitation award criteria require that GSA evaluate bids only on the base bid plus alternates. GSAR § 552.236-73 includes three alternate Basis of Award provisions and the protester argues that if GSA wanted to evaluate options the agency should have included Alternate III, which requires the evaluation of options rather than Alternate II which requires the evaluation of only the base bid and the alternates. SAE contends that its interpretation of the award provision is reasonable because the mention of option evaluation only appears in the technical specifications section and does not appear in the primary Basis of Award provision.

SAE points out that a prior similar GSA solicitation under which SAE was awarded a contract on the basis of its low bid for the base year plus options properly included Alternate III in the Basis of Award provision. Thus, SAE asserts that here, because solicitation did not contain the Alternate III language, SAE reasonably presumed that options were not to be evaluated.

Finally, SAE argues that GSA "covertly awarded the [c]ontract without notifying SAE," after agreeing that no award would be made "without prior notice to SAE." SAE asserts that these actions by GSA constitute bad faith since they "apparently were calculated to delay SAE's protest to GAO until substantial costs were incurred on the improperly awarded [c]ontract thereby limiting SAE's opportunity for meaningful relief."

Where, as here, a dispute exists as to the actual meaning of a solicitation requirement, we normally resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all provisions of the solicitation. Aerojet Ordnance Co., B-235178, July 19, 1989, 89-2 CPD ¶ 62. To be reasonable, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. Id.

Here, where the solicitation provisions are conflicting, it was not reasonable for SAE to assume that GSA would evaluate the base bid and alternates only since this interpretation disregards relevant parts of the solicitation. In particular, SAE ignores both the provisions in the "Important Information about the Evaluation Maintenance Contract" section which explicitly states that the options for elevator maintenance will be evaluated, and FAR § 52.217.5 which was included in the specifications for elevator maintenance and which states that options will be evaluated.

As GSA has explained, apparently the Basis of Award provision was selected before the agency determined to require the elevator maintenance work under the solicitation. As a result, while the solicitation section describing the elevator maintenance work did contain the requisite provisions providing that the maintenance options be evaluated, GSA inadvertently failed to correct the initial basis of award language. However, block 17, the listing of the work required and the prices specified, of the Standard Form 1442 "offer section" of the solicitation, which bidders were required to complete, contained blanks for the option prices for elevator maintenance and called for entry of a total bid price which included these option prices. In view of the cumulative indications in the solicitation that the options would be evaluated, on balance the solicitation did indicate that option prices would be evaluated. See Network Solutions Inc., B-234569, May 15, 1989, 89-1 CPD ¶ 459.

SAE's contention that it reasonably relied on the initial basis of award language is belied by the record. First, SAE did enter prices for the elevator options, and its total price entry reflects these prices. While an offeror is expected, in any case, to read the entire solicitation and to do so in a reasonable manner, Jedco, B-223579, Aug. 26, 1986, 86-2 CPD ¶ 228, here, SAE's action evidences that it read and was aware of the solicitation sections which explicitly state that options would be evaluated. Further, SAE's representatives were present at the pre-bid conference at which GSA made it unequivocally clear that options would be evaluated to determine the low bid, thus reinforcing that the solicitation language regarding option evaluation was the intended method of evaluation. Accordingly, there is nothing in the record

which supports SAE's contention that it was somehow misled by the solicitation language, and to the extent that SAE may have found the clauses in question unclear, SAE should have sought clarification from the contracting officer or filed a protest contesting the clauses prior to bid opening. 4 C.F.R. § 21.2(a)(1) (1991).

Finally, while SAE's contention that the agency somehow obligated itself to notify SAE prior to making an award to Boro is not substantiated by the record; in any event, a late notice of award is only procedural in nature and does not affect the validity of an otherwise properly awarded contract. See Sikora & Fogleman, B-236960, Jan. 17, 1990, 90-1 CFD ¶ 61.

The protest is denied.


for James F. Hinchman
General Counsel