



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Advanced Environmental Technology Corporation
File: B-255353
Date: February 24, 1994

Molly Hackett, Esq., for the protester,
James K. White, Assistant General Counsel for Finance and
Litigation, Department of Commerce, for the agency,
Jan B. Montgomery, Esq., and Lynn H. Gibson, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Where protester's offer on an indefinite-delivery,
indefinite-quantity contract based unit prices on the
minimum estimated quantity, rather than on one single unit,
the agency properly did not award the contract to the
protester.

DECISION

Advanced Environmental Technology Corporation (AETC)
protests the award of a contract by the Department of
Commerce, National Institute of Standards and Technology
(NIST), to Laidlaw Environmental Services, Inc. (Laidlaw),
under request for proposals (RFP) No. 52-SBNB-3-C7567,
issued for the removal, transport, and disposal of hazardous
waste materials and chemicals. The solicitation called for
offers on an indefinite-delivery, indefinite-quantity
contract for 1 base year of performance and 4 option years.
Although AETC appeared to submit the lowest offer, NIST
recalculated AETC's prices and found AETC to be the second
lowest offeror. The variation in AETC's and NIST's
calculations stemmed from different definitions of "unit
price." AETC contends that its unit pricing approach was
proper and that the agency should not have recalculated its
proposal. On this basis, AETC maintains that it should be
awarded the contract as the lowest responsible offeror.

We deny the protest.

The solicitation, issued on April 14, 1993, was sent to 59
firms and established a closing date of May 14, 1993, for
the receipt of offers. The solicitation called for

technical¹ and business proposals for the removal, transport, and disposal of 258 hazardous waste items. These items were identified by Contract Line Item Numbers (CLINs). Those items that could be disposed of in more than one way² were identified by the letter sequence following the numbers in a CLIN, such as 001AA, 001AB, or 001AC. NIST required a price for the removal and disposal of each item and all methods for disposal of each item.

The RFP Schedule included columns for each CLIN labeled "Estimated Minimum Quantity Pounds or Gas Cylinders," "Estimated Maximum Quantity (Pounds)," and "Estimated Maximum Number of Gas Cylinders," for which the agency had filled in the appropriate figures. Next to those columns for each CLIN were additional columns for the offeror to fill in: "Unit Price Base Year," "Total Price Base Year," and "Unit Price" and "Total Price" for each option year. The solicitation provided that the evaluation of prices would be based on the maximum estimated quantity, and therefore NIST expected that the total price for each CLIN would be the product of the unit price multiplied by the maximum estimated quantity. NIST further intended that each unit price quoted would reflect the price for one pound or one gas cylinder, whichever was appropriate for that CLIN.

Various questions from prospective offerors resulted in two amendments to the solicitation, prior to the closing date for the receipt of proposals. None of the 16 questions involved the definition of "unit price."

As of the closing date of the solicitation, NIST received four proposals, including AETC's. AETC states that in its proposal it based the unit price for each CLIN on the estimated minimum quantity of the CLIN, rather than on a single pound or cylinder. For example, in waste category CLIN 001AA, NIST identified the minimum quantity as 100 pounds and the maximum quantity as 8,000 pounds. AETC quoted a unit price of \$21.00 for the CLIN's base year, which the company says was the price for disposal of 100 pounds of this material rather than a price for one pound. AETC's proposal did not show that its unit prices were based on the minimum estimated quantity.

NIST states that when it evaluated AETC's proposal, it was not aware that AETC based its unit price on the minimum

¹There is no issue in the instant protest as to the propriety of the technical evaluations. Laidlaw was ranked the highest technically.

²For example, by recycling, incineration, or thermal destruction.

estimated quantity for each CLIN. Therefore, when NIST prepared a price analysis of AETC's offer, multiplying the unit price of each CLIN by the maximum estimated quantity for that CLIN, the total price was much higher than AETC's calculation. NIST calculated AETC's total price to be \$9,984,235, the second lowest bid, while AETC's own total price calculation was \$3,408,756. NIST's other price evaluations revealed that Laidlaw offered the lowest price at \$5,928,564.

Although NIST was not aware of AETC's pricing approach, the agency had notified AETC on several occasions that there appeared to be errors in its calculation of total prices for some of the CLINs. For example, NIST contends that in June 1993 it advised AETC that its total prices did not appear to be the product of its unit prices multiplied by the maximum estimated quantities, and that it should check its calculations.

On September 9, 1993, contract award was made to Laidlaw, and the unsuccessful offerors were notified of the award on September 10. On September 15, 1993, AETC contacted NIST and was informed of the basis for award. AETC protested to the agency on September 24, 1993. On September 29, 1993, the agency rejected AETC's protest as untimely. Although the protest was in fact timely, which the agency now concedes, NIST states that it also found the protest to be without merit. On October 8, 1993, AETC filed the instant protest with our Office. In essence, AETC claims that its interpretation of the term "unit price" was reasonable, and therefore its bid should stand as submitted.

AETC first claims that NIST utilized an unstated interpretation of the term "unit price" in evaluating the proposals. According to AETC, the term "unit price" was left undefined by the solicitation because there was no separate, specific provision indicating that the term "unit price" meant the price for disposal of one pound or one gas cylinder of hazardous waste. To the extent that AETC is now protesting the lack of a specific definition for the terms "unit" or "unit price" in the solicitation, its protest is untimely.³

The next issue is whether NIST's definition of a unit to be one pound or one gas cylinder of hazardous material was reasonable, or if AETC's approach of defining a unit based on the minimum estimated quantity was an acceptable

³Our Bid Protest Procedures require that a protest alleging improprieties in a solicitation which are apparent prior to bid opening or the time set for receipt of initial proposals be filed prior to that time. 4 C.F.R. § 21.2(a)(1) (1993)


alternative. We find that the agency's definition of a unit was reasonable, and that the protester's correlation of a unit with the minimum estimated quantity was not acceptable for this solicitation.

As noted above, the schedule had clearly marked headings that requested unit RFP prices and total prices for each CLIN. None of the offerors, including AETC, raised any questions regarding the meaning of the term "unit," and the other offerors submitted pricing proposals that defined unit price in the same way as the agency. Since the schedule provided for minimum and maximum quantities for each CLIN in terms of pounds or gas cylinders, the agency's interpretation of a unit as being one pound or one cylinder was reasonable.

Furthermore, AETC's approach of quoting a unit price based on the price for disposal of the minimum estimated quantity for each CLIN was not acceptable under this solicitation. First, pursuant to Federal Acquisition Regulation (FAR) § 16.504, an indefinite quantity contract requires the government to order and the contractor to furnish at least a stated minimum quantity of services, and to furnish as ordered any additional quantities not to exceed a stated maximum. Thus, the purpose of a minimum estimated quantity is to reflect the minimum amount of services the government expects to order and not to prescribe a unit of measurement for the services called for by a contract.

Second and more importantly, AETC's definition of "unit" is not appropriate in the context of this contract. Under this contract, the disposal of any substance would take place upon the issuance of a delivery order. If an order was issued to dispose of an amount of a substance less than the minimum estimated quantity, NIST could still be required to pay the unit price which corresponds with the price for the minimum quantity. Although AETC argues that its proposed price for the disposal of one pound or one gas cylinder can be calculated by dividing its unit price by the minimum estimated quantity, we have found similar approaches to be improper. See Cellular One, B-250854, Feb. 23, 1993, 93-1 CPD ¶ 169; Valix Federal Partnership I, B-250686, Feb. 1, 1993, 93-1 CPD ¶ 84. Under these circumstances, the agency acted reasonably in not awarding the contract to AETC.

The protest is denied.


Robert P. Murphy
Acting General Counsel