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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: AllWorld Language Consultants, Inc.

File: B-298831

Date: December 14, 2006

Harvey G. Sherzer, Esq., Dickstein Shapiro LLP, for the protester.
Sheryl A. Butler, Esq., Drug Enforcement Administration, for the agency.
Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

1. Protest that awardee in fixed-price sealed bid acquisition submitted unrealistically low prices is dismissed, since question of whether a firm's pricing is too low does not involve the responsiveness of the firm's bid, but rather the firm's responsibility; agency, in making award, made an affirmative determination of responsibility, which is not for consideration under our Bid Protest Regulations except in circumstances not alleged by protester.
 2. Protest that firm's bid was nonresponsive because it included incorrectly calculated overtime rates is denied where record shows that miscalculation amounted to waivable minor informality.
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DECISION

AllWorld Language Consultants, Inc. (ALC) protests the award of a contract to Conduit Language Specialists under invitation for bids (IFB) No. DEA-06-B-0001, issued by the Department of Justice, Drug Enforcement Administration (DEA), to acquire language-related services, including monitoring, interpretation, translation and transcription services for DEA's San Francisco field office. ALC maintains the agency should have rejected Conduit's bid because it included unrealistically low prices and overtime rates calculated in a manner that was inconsistent with the terms of the IFB.

We deny the protest.

The IFB, issued as a two-step sealed bid acquisition, contemplated the award of an indefinite-delivery, indefinite-quantity contract for a base year, with four 1-year

options, with pricing on a fixed-price-per-hour basis for various labor categories. Firms were required to submit technical proposals during step one, and those firms whose proposals were found technically acceptable would submit sealed bids during step two. Four firms' proposals were found technically acceptable, and all four submitted bids. The bid prices were as follows:

Conduit	\$36,663,500
ALC	\$46,392,050
SOS	\$47,248,830
Metropolitan	\$69,818,280

Agency Report (AR), exh. 8. The agency subsequently adjusted Conduit's bid upward--to \$39,174,600--in order to reflect a revised Department of Labor Service Contract Act (SCA) wage determination, and made award to Conduit based on this amount.

ALC asserts that the agency improperly made award to Conduit because its bid was so low that it was unrealistic. The protester points out that the solicitation specifically provided that unrealistically low bids could be rejected.

We dismiss this aspect of the protest. Where, as here, fixed unit prices are being offered to the government, a protest that a bid should be rejected solely for being too low does not provide a legally cognizable basis for rejection of the bid. SMC Info. Sys., B-224466, Oct. 31, 1986, 86-2 CPD ¶ 505 at 5-6. To the extent that an agency has concern that a firm's pricing is too low, its recourse lies solely in finding the firm nonresponsive. Id. In making award to Conduit, DEA determined the firm to be responsible, see Federal Acquisition Regulation (FAR) § 9.105-2(a)(1), and ALC's protest based on Conduit's allegedly low price amounts to a challenge to that affirmative determination of Conduit's responsibility. Our Office does not consider challenges to affirmative responsibility determinations except in limited circumstances not alleged or present in this case. 4 C.F.R. § 21.5 (c) (2006).

ALC maintains that Conduit's bid should be rejected as nonresponsive for failing to conform to the instructions in the IFB regarding its calculation of overtime rates. In this regard, the IFB provided that, for employees covered by the SCA, the overtime rates were to be equal to 1.5 times the base--as opposed to burdened--hourly rates used to prepare the bid price. ALC contends that Conduit's bid violated this requirement because it included overtime rates that were 1.5 times the firm's burdened hourly rates.

To be responsive, a bid must represent an unequivocal offer to comply with the IFB's material terms. FAR § 14.404-2. However, where a discrepancy between what is required in the IFB and what is offered is de minimus, and acceptance of the deviating bid will result in a contract that will meet the government's actual requirements and will not be prejudicial to any other bidder, the discrepancy may be

waived as a minor informality. FAR § 14.405; Legare Constr. Co., B-257735, Nov. 4, 1994, 94-2 CPD ¶ 173 at 2-4; see also M&M Servs., Inc.; EPD Enter., Inc., B-208148.3 et al., May 23, 1983, 83-1 CPD ¶ 546 at 4-5.

Conduit's failure to calculate its overtime rates correctly constituted a minor informality. Overtime rates were not included in the calculation of the bid prices for purposes of determining the low bidder, so it is not clear--and the protester has not explained--how any other bidder could have been prejudiced by Conduit's miscalculation. Second, nothing in Conduit's miscalculation alters the obligation established in its bid to perform the exact thing called for under the IFB; Conduit is legally obligated to perform the contract, including overtime, in exact accordance with the terms of the solicitation.

Third, the record shows that Conduit's bid will result in the lowest price to the government even given the miscalculation. In this regard, the difference between Conduit's bid (as recalculated by the agency to account for the change in the wage rate determination) and ALC's bid is \$7,217,450. The error in Conduit's calculation of its overtime rates amounts to \$1.86 per hour of overtime (\$1.87 in the case of one line item). AR, exh. 10, Letter from Conduit to Agency, June 6, 2006, attach. 1. Applying this hourly difference, even if every estimated hour under the IFB for SCA employees were priced as an overtime hour (a virtual impossibility, since overtime is defined in the IFB as work in excess of 40 hours per week), the additional cost of Conduit's performance would be less than the difference between the two bids. We conclude that Conduit's miscalculation was a waivable minor informality that did not affect the responsiveness of the bid.

The protest is denied.

Gary L. Kepplinger
General Counsel