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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

Decision

Matter of: Orion Construction Company, Inc.

File: B-294014

Date: June 30, 2004

Thomas J. Kelleher, Jr., Esq., Smith, Currie & Hancock, for the protester.
Maj. Gregory R. Bockin and Charles D. Shults, Esq., Department of the Army, for the agency.
Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where an invitation for bids (IFB) soliciting bids for multiple line items contains clauses that permit the government to accept any item or combination of items in the bid, the agency has the discretion to make a partial award of any combination unless the IFB elsewhere contains express language precluding such an award.

DECISION

Orion Construction Company, Inc. protests the award of a contract to Dorado Services, Inc. under invitation for bids (IFB) No. W9124C-04-B-0002, issued by the Department of the Army for demolition, framing, and roofing work for a building located at Fort Jackson, South Carolina. Orion essentially argues that the agency's partial award of two contract line items (CLINs) to Dorado was inconsistent with the IFB.

We deny protest.

The IFB was issued on February 16, 2004. The IFB identified five CLINs. The agency reports that because of the size of the roof to be replaced, the engineers were not certain that the projected funding would permit all the re-roofing to be performed. Therefore, the engineers divided the work into phases, which would give the agency the flexibility to award all or part of the work depending on the prices received. The CLINs as contained in the bid schedule reflect this approach, that is, each CLIN reflected a part of the roof requiring re-roofing. Agency Report, Tab 17, Contract Specialist's Statement, at 1. Several provisions of the solicitation advised bidders that the government reserved the right to award all, none, or a combination of the

line items. First, block 10 of Standard Form 1442, the IFB cover sheet, stated that “[t]he Government reserves the right to award any, all, or any combination of line items.” Second, in section B, entitled “Supplies or Services and Prices,” the IFB repeated essentially the same language. Third, the solicitation incorporated the clause at Federal Acquisition Regulation § 52.214-19, entitled “Contract Award-Sealed Bidding-Construction,” which provides that “[t]he Government may accept any item or combination of items, unless doing so is precluded by a restrictive limitation in the solicitation or bid.” IFB at 200.

Five bids, including Orion’s, were received by bid opening. Orion was the apparent low bidder for all five line items combined and also for CLIN 0001. However, based on the funding available for the project, the agency determined to award CLINs 0002 and 0005 first because the roof areas covered by these CLINs were leaking severely. Dorado was the low bidder for CLINs 0002 and 0005, and the Army awarded Dorado a contract for these two CLINs on April 26. Orion subsequently filed this protest with our Office.

While not disputing that the agency lacked sufficient funds to award all of the line items, or that Dorado was the low bidder for CLINs 0002 and 0005, Orion nevertheless contends that it should have received the award because the solicitation established an intent to award CLIN 0001 first and, therefore, Orion, as the low bidder on CLIN 0001, as well as the low bidder for the entire project, should have received an award.

Where, as here, an IFB allows an agency to accept any item or combination of items, it has the discretion to make an award of less than all of the line items, unless the IFB contains express language precluding such an award. Fire Sec. Sys., Inc., B-284147, Feb. 23, 2000, 2000 CPD ¶ 31 at 3; Talbott Dev. Corp., B-220641, Feb. 11, 1986, 86-1 CPD ¶ 152 at 2; Granite State Mach. Co., Inc., B-199644, Nov. 26, 1980, 80-2 CPD ¶ 396 at 5. The IFB here contains no express language precluding a partial award and, in fact, the protester appears to be seeking a partial award for CLIN 0001.

The protester cites two IFB provisions that it contends support its position that the agency was required by the terms of the IFB to award CLIN 0001 before any other CLIN. The first provision, entitled “Contract Completion Date,” while identifying phase 1 as “Base Bid Item #0001,” specifically provided that the government “has options to award all phases or individual phases [of the work] and [set the] priority of the phases.” IFB at 01045-35. By its terms, this provision does not support the protester’s position. Rather, the provision appears entirely consistent with the language in other parts of the IFB, quoted above, which permits a partial award of any CLIN or combination of CLINs. The second provision cited by the protester indicates that each phase of the work had a separate performance period, and that potential liquidated damages would apply to each phase separately. The provision further provides as follows:

If more than one line item (phase) is awarded initially (or at a later date), the performance period of the subsequent phase(s) will be adjusted to 30 days instead of 120 days. For example only, if line items 0001, 0002, and 0003 are awarded initially, the performance period for 0002 and 0003 will be 30 days each.

IFB at 01045-3.

There is nothing in this quoted language that even remotely suggests that the agency is precluded from awarding CLINs 0002 and 0005 but not CLIN 0001.

The protester also maintains that it relied upon an oral representation from the contract specialist, allegedly made to another potential bidder, that CLIN 0001 would be awarded first as the base bid item. The contract specialist denies making any such representation. Even assuming that the representation was made, it is well settled that oral advice given by representatives of the contracting officer is not binding on the government and a bidder relies on oral explanations of the solicitation at its own risk. SAF Eng'g Assocs., Inc., B-275740, Mar. 19, 1997, 97-1 CPD ¶ 118 at 3. This is especially true where the advice is inconsistent with the solicitation's express provisions.

In short, we see no basis to object to the agency's award to Dorado.¹

The protest is denied.

Anthony H. Gamboa
General Counsel

¹ The protester's comments on the agency report raise a number of new issues concerning the terms of the IFB or the award decision. These issues, raised for the first time in the protester's comments, are untimely because they are based on information that was available to the protester at the time it filed its initial protest, if not earlier. Bid Protest Regulations, 4 C.F.R. § 21.2(a) (2004).