



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Environmental Specialists, Inc.

File: B-245782

Date: January 22, 1992

Amy Landau, Esq., for the protester.
Ronnie Smith, for Eastern Maintenance & Services, Inc., an interested party.
Herbert F. Kelley, Jr., Esq., and Gerald P. Kohns, Esq., Department of the Army, for the agency.
Anne B. Perry, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that award based on total price for base and option years was inconsistent with solicitation is denied where solicitation expressly stated that the award would be based on total bid including options.
2. The necessity for a business license in a particular state or locality is generally a matter between the contractor and the issuing authority and possession of such a license is not a requirement for award absent a specific licensing requirement in the solicitation.

DECISION

Environmental Specialists, Inc. (ESI) protests the award of a contract to Eastern Maintenance and Services, Inc. under invitation for bids (IFB) No. DABT-51-91-B-0010, issued by the Department of the Army for removal and disposal of asbestos. ESI alleges that the agency improperly included the option year prices in evaluating the low bid, and awarded a contract to a firm not licensed by the state of Texas to perform asbestos removal.

¹ESI also questions why the contracting officer awarded the contract despite ESI's agency-level protest. Agency-level protests do not trigger the automatic stay provisions of the Competition in Contracting Act of 1984, 31 U.S.C. § 3553(d)(1) (1988); C&W Equip. Co., B-220459, Mar. 17, 1986, 86-1 CPD ¶ 258.

We deny the protest.

The solicitation, issued on June 18, 1991, sought a contract for asbestos removal and disposal at Fort Bliss, Texas, for a base period and four 1-year options. The solicitation contained the standard "Evaluation of Options" clause, Federal Acquisition Regulation (FAR) § 52.217-5, which provides that "the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement." The clause further provides that the evaluation of options does not obligate the government to exercise the options. The solicitation also required bidders to submit a bid bond in the amount of 20 percent of the base year bid price.

Bid opening was conducted on August 8; Acme Environmental Services submitted the low total bid of \$911,700, which was rejected as nonresponsive for failure to include the required Certificate of Procurement Integrity. Eastern Maintenance was the second low bidder, with a total bid of \$1,026,750, and ESI was the third low bidder with a total bid of \$1,067,900.

ESI filed a protest with the contracting officer on August 21, protesting award to any bidder based on a price other than the low price for the base year. In this agency-level protest, ESI alleged that the IFB did not provide notice to bidders that award would be based on the total price including options. Award was made to Eastern Maintenance on September 13 as the low, responsive, responsible bidder. On September 20, the protester filed a protest in our Office. Here, the protester again argues that the agency improperly determined the low bid by adding the prices for the option years, and that it awarded a contract to a firm which is not licensed in Texas to perform asbestos work.

ESI contends that award must be based on the lowest aggregate price for the base year only, because that is the only year for which the agency has received funding. The protester also alleges that the solicitation provided for award to be based on the base year price only because bidders were required only to submit bid bonds for 20 percent of the base year bid price.

The agency's price evaluation was proper and consistent with the solicitation. The IFB provided that award would be based on the lowest aggregate price, which included the option year prices. The fact that the solicitation required the amount of the bid bond to be based on the base year price does not affect the clear language of the "Evaluation of Options" clause which states that the bid price "for award purposes" will be arrived at by adding all option year

prices to the base year price. Williamson County Ambulance Serv., Inc., B-239017, June 22, 1990, 90-1 CPD ¶ 583. ESI's argument concerning the availability of option year funds is without merit since the evaluation of option prices for award purposes does not obligate the government to later exercise the options. FAR § 17.201.

ESI also argues that Eastern Maintenance lacks the required state license to perform asbestos work, and that without such a license the contracting officer cannot determine that the bidder is qualified to perform.

Whether there is any requirement for a contractor to possess a license to perform asbestos work on a military installation is generally a matter between the contractor and the issuing authority, and the lack of such a license will not be a bar to a contract award absent a specific licensing requirement in the solicitation. Technology Advancement Group, B-238273; B-238358, May 1, 1990, 90-1 CPD ¶ 439. It may, however, be considered in determining a bidder's responsibility. Southern Nevada Communications, B-241534, Feb. 11, 1991, 91-1 CPD ¶ 146. In this case, the IFB requires only that the contractor's workers are certified and knowledgeable of the asbestos removal procedures prior to commencement of work. Whether Eastern Maintenance is qualified to perform is a matter of responsibility. The Army determined that Eastern Maintenance is responsible, and we will not review such an affirmative determination of responsibility absent a showing of possible fraud or bad faith on the part of contracting officials or that definitive responsibility factors have not been met. Bid Protest Regulations, 4 C.F.R. § 21.3(m)(5) (1991). No such showing had been made here.

The protest is denied.



James F. Hinchman
General Counsel