



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: National Services, Inc.

File: B-400836.2

Date: March 11, 2009

Gerald J. Richter, Esq., Facca Richter & Pregler, PC, for the protester.
Tracy Downing, Esq., Department of Veterans Affairs, for the agency.
Frank Maguire, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest that additive bid amounts were improperly included in calculation of bidders' prices for evaluation purposes is denied where evaluation in this manner was consistent with reasonable reading of relevant solicitation language.

DECISION

National Services, Inc., of Newberry, Michigan, protests the award of a contract by the Department of Veterans Affairs (VA) to M R Tafoya Construction, Inc., under invitation for bids (IFB) No. VA-786A-08-IB-0049, for gravesite expansion and associated work at Fort Gibson National Cemetery, Oklahoma.

We deny the protest.

The IFB, issued on July 27, 2008, included two base bid items and five alternate items. With regard to evaluation of bid prices for award, IFB amendment 1 provided as follows:

A single award will be made on Bid Item 1 and Bid Item 2. If additional funds are available then Bid Add Alternate 1 will be added to the award. If more additional funds are available then Bid Add Alternate 2 will be added to the award. If more additional funds are available then Bid Add Alternate 3 will be added to the award. If more additional funds are available then Bid Add Alternate 4 will be added to the

award. If more additional funds are available, then Bid Add Alternate 5 will be added to the award.

IFB amend. 1.

VA received bids from Tafoya and National. Because it determined that adequate funds were available to award the additive items, the agency calculated bidders' prices based on all seven items. Since Tafoya's bid was low, VA made award to Tafoya. Agency Request for Summary Dismissal (ARSD), Feb. 5, 2009, at 1. National then filed an agency-level protest, asserting that, based on its reading of the amendment 1 language quoted above, prices for the additive bid items were improperly included in the evaluated prices, and that it should have received award on the basis of its low bid for the two base items alone. *Id.* at 2. VA sustained the protest. *Id.* Tafoya then protested to our Office. In its report in response to the protest, VA indicated it had determined that its original decision to calculate bid prices based on all seven items was proper and that it was reinstating its award to Tafoya. We dismissed Tafoya's protest on the basis of this corrective action. B-400836, Dec. 12, 2008.¹ By letter dated January 12, 2009, VA advised National that it was rescinding the decision sustaining its agency-level protest. Protest exh. 6. This protest followed.

National asserts that, based on its reading of amendment 1, the additive bid item prices improperly were included in the calculation of bidders' prices and that it should have received award on the basis of its low bid for the two base items.

In interpreting solicitation language, we will read the solicitation as a whole and in a manner that gives effect to all of its provisions. CCITE/SC, B-400782, Nov. 21, 2008, 2008 CPD ¶ 216 at 3. To be reasonable, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. *Id.*

Here, the only relevant IFB reference to the price evaluation is the quoted amendment 1 provision. National's interpretation turns on the first sentence of that provision, which refers to a single award on items 1 and 2. However, National's interpretation fails to account for the balance of the provision, which goes on to explain that, if "additional funds are available," alternate items will be "added to the award." National reads this language, essentially, as providing that, even where VA finds it appropriate to award additional items, the price evaluation will be limited to items 1 and 2. However, the provision includes no language supporting this

¹ National asserts that the agency improperly failed to provide it with notice of Tafoya's protest, in violation of Federal Acquisition Regulation (FAR) § 33.104(a)(2) and our Bid Protest Regulations, 4 C.F.R. § 21.3 (2008). However, our jurisdiction does not extend to administrative or procedural matters such as this that do not affect the validity of an award. This argument therefore will not be considered. See, e.g., Evans Sec. Solutions, Inc., B-311035, Mar. 19, 2008, 2008 CPD ¶ 58 at 3 n.3.

interpretation, which would result in an award that does not represent the lowest price for the items awarded. Rather, the provision, read as a whole, advises bidders only that, at a minimum, a single award will be made for items 1 and 2 and that, if additional funds are found to be available, the additive items also will be awarded; the provision nowhere states that the prices for additive items to be awarded will not be evaluated.²

The protest is denied.

Gary L. Kepplinger
General Counsel

² We note that our reading of the language in question also is consistent with the general principle that the evaluation of bids must be based on the likely cost to the government, based on the actual work awarded. See Ahern & Assoc., Inc., B-254907.4, Mar. 31, 1994, 94-1 CPD ¶ 236; TNT Indus. Contractors, Inc. B-288331, Sept. 25, 2001, 2001 CPD ¶ 155.