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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Hunot Fire Retardant Company

File: B-286679.2

Date: May 21, 2001

John G. Horan, Esq., McDermott, Will & Emery, for the protester.
Paul F. Dauer, Esq., Dauer & Thompson, an intervenor.
Marion T. Cordova, Esq., United States Department of Agriculture, 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

Protest that agency should have considered the clean-up costs associated with using one firm's fire retardant in determining the lowest bidder is denied where solicitation did not advise prospective bidders that agency would evaluate such costs; solicitations must expressly indicate any price-related factors (other than bid price) that agency intends to evaluate for award purposes.

DECISION

Hunot Fire Retardant Company protests the award of a contract to Fire-Trol Holdings, L.L.C. under invitation for bids (IFB) No. 49-00-12, issued by the United States Department of Agriculture, Forest Service for long-term fire retardant. Hunot alleges that the agency improperly failed to add certain costs to the Fire-Trol bid in arriving at the firm's price for award purposes, and that Hunot's price would have been low had the agency added these costs.

We deny the protest.

The IFB contemplates the award of one or more requirements contracts to furnish bulk fire retardant at numerous temporary and permanent bases throughout the United States. IFB at 129. The solicitation included a standard clause from the Agriculture Acquisition Regulation (AGAR) which provides:

To evaluate offers for award purposes, the Government will apply the Offeror's proposed fixed prices/rates to the estimated quantities

included in the solicitation, and will add other direct costs if applicable.

AGAR § 452.216-72, 48 C.F.R., Ch. 4 (2000). In response to the IFB, the agency received two bids, one from Fire-Trol and one from the protester. After evaluating the bids, the agency determined that Fire-Trol had submitted the lowest price for 21 of the 24 bases and made award to the firm for those locations.

Hunot contends that the agency improperly failed to add the cost associated with handling the Fire-Trol product to the firm's bid before arriving at its price for evaluation and award purposes. According to the protester, the Fire-Trol product contains a chemical, sodium hexacyanoferrate, that produces cyanide when exposed to ultraviolet light. The protester asserts that the agency was required to add to Fire-Trol's bid the cost associated with cleaning up the agency's facilities and equipment after storage and handling of the Fire-Trol product, because traces of cyanide will remain. Hunot maintains that these costs are significant because the waste water generated from cleaning up the agency's equipment must be disposed of in accordance with numerous state and federal environmental laws and regulations. Hunot contends that these costs are "other direct costs" that the solicitation provision quoted above provided would be added to bids for evaluation purposes.

The protest is without merit. The Federal Acquisition Regulation (FAR) requires agencies to include in an IFB an express statement of any price-related factors other than bid price that will be considered when evaluating bids. FAR §§ 14.201-5(c), 14.201-8.¹ Consistent with the FAR, we have held that solicitations must clearly identify the basis for bid evaluation; where an agency intends to evaluate a price-related factor in arriving at its award decision, it is required to expressly identify that factor in the solicitation. Respiratory & Convalescent Specialties, Inc. B-255176, Feb. 14, 1994, 94-1 CPD ¶ 101 at 3.

Here, the IFB did not expressly provide for adding clean-up costs to the bid prices for evaluation purposes. Hunot's reliance on the solicitation language quoted above is misplaced. That general language (i.e. other direct costs, if applicable) is inadequate to put prospective bidders on notice that the agency intends to evaluate any specific price-related factors beyond the bid prices submitted; simply stated, if the agency had intended to evaluate the clean-up costs associated with the use of one or another product, it would have had to expressly advise prospective bidders of

¹ FAR § 14.201-8 includes an illustrative list of five possible price-related factors which could differ among prospective bidders (for example, the origin of supplies), and states that the agency "shall" include a statement regarding the applicability of the illustrative price-related factors in any solicitation where the agency intends to evaluate those price-related factors.

its intent by the terms of the IFB. In the absence of an express statement in the IFB, the agency properly did not add the possible costs associated with clean-up to Fire-Trol's bid in arriving at the firm's evaluated price.²

The protest is denied.

Anthony H. Gamboa
General Counsel

² To the extent that Hunot's protest can be considered an allegation that the IFB should have provided for evaluation of the clean-up costs associated with using the Fire-Trol product, since Hunot did not file in our Office prior to the deadline for submitting bids, it is untimely. 4 C.F.R. § 21.2(a)(1) (2001).