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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Squires Timber Company

File: B-298859

Date: December 1, 2006

Tommy L. Norris for the protester.
Lori Polin Jones, Esq., Department of Agriculture, for the agency.
Edward Goldstein, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's high timber sale bid was improperly rejected based on discrepancy between minimum advertised rate for particular species of timber and rate actually bid; since discrepancy is clearly negligible, protester's bid is responsive and pricing defect may be corrected as minor informality.

DECISION

Squires Timber Company protests the rejection of its bid as nonresponsive under the solicitation for the Devil's Club Timber Sale, conducted by the Forest Service, Department of Agriculture.

We sustain the protest.

The solicitation called for sealed bids offering to purchase various species of government-owned timber. Minimum acceptable rates were set forth for each species. For white oak sawtimber, the minimum acceptable rate was set at \$33.22 per unit with an estimated quantity of 71 ccf (hundred cubic feet). Bids were opened on September 12, 2006, and Squires was the high bidder with an overall bid of \$184,051.68. Winslow-Bateman Forestry was the second high bidder at \$123,968.31. The agency noted, however, that Squires had bid only \$26.09 per unit for the white oak sawtimber portion of the sale. Since this bid was below the minimum acceptable rate, the contracting officer rejected Squires' bid as nonresponsive and made award to Winslow-Bateman.

Squires claims that it intended to bid the required minimum for all species, and that

its bid on the white oak sawtimber was the result of an arithmetic error in calculating its price which it should be permitted to correct.

Although, as a general rule, a bid must be rejected as nonresponsive where it does not strictly conform to the solicitation's terms and conditions, this rule does not apply to deviations which are immaterial or matters of form rather than substance. We have held that where the discrepancy between the minimum advertised rate for a particular species of timber and the rate actually bid is clearly "negligible," the discrepancy may be viewed as a minor informality and the pricing defect may be corrected. Building By Thrift, Inc., B-215036, June 28, 1984, 84-1 CPD ¶ 691; W-1 Forest Prods., Inc., B-204168.2, Feb. 17, 1982, 82-1 CPD ¶ 138.

In this case, we conclude that the discrepancy between Squires' bid of \$26.09 per unit of white oak sawtimber and the specified minimum of \$33.22 per unit (a difference of \$7.13 per unit) is negligible. Squires' bid would have been \$506.23¹ higher (for a total bid of \$184,557.91) had Squires bid the minimum rate for white oak--a discrepancy resulting in a 0.275 percent increase in Squires' total bid. Moreover, since Squires was the high bidder by more than \$60,000, and the \$506.23 adjustment to Squires' bid is an upward adjustment, making Squires' price even more favorable to the government, there is no possibility that any other bidder would be prejudiced or that the integrity of the procurement process would be undermined by adjusting Squires' bid. Accordingly, we conclude that Squires' bid is responsive, that the \$506.23 pricing defect can be corrected as a minor informality, and that Squires should therefore receive the award if otherwise eligible.

Recommendation

While the Devil's Club Timber Sale contract has already been awarded to Winslow-Bateman, the Forest Service has represented that performance has not

¹ The \$506.23 increase in Squires' bid is calculated by multiplying the estimated number of white oak units (71) by \$7.13 (the difference between Squires' bid and the minimum acceptable bid rate for the white oak).

begun. Accordingly, we recommend that the agency terminate the award to Winslow-Bateman, if feasible, and make award to Squires at its adjusted bid price if otherwise appropriate.²

The protest is sustained.

Gary L. Kepplinger
General Counsel

² We considered this protest under 4 C.F.R. § 21.13(a) (2006) because the Forest Service has agreed to have protests of timber sales decided by our Office. When we consider protests of sales, the provisions of 4 C.F.R. § 21.8(d), pertaining to recommendations for the payment of protest costs, do not apply. 4 C.F.R. § 21.13(b).