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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: American Printing House for the Blind, Inc.

File: B-298011

Date: May 15, 2006

Walter L. Sales, Esq., Stoll Keenon Ogden PLLC, for the protester.
David P. Metzger, Esq., Anand V. Ramana, Esq., and David J. Craig, Esq., Holland & Knight LLP, for the American Foundation for the Blind; Frederic G. Antoun, Jr., Esq., for Carolina Talking Books, Inc.; William S. Taylor, Esq., Taylor & Rea, PLC, for Potomac Talking Book Services, Inc.; and James H. Marlow, Esq., Hamilton and Faatz, for Talking Book Publishers, Inc., the intervenors.
Emily Vartanian, Esq., Library of Congress, for the agency.
Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Under invitation for bids (IFB) for production of books on tape that provided for multiple awards and limited the number of titles to be awarded to an individual bidder to 500, award of a contract for less than 500 titles to a bidder, which will also be performing work on one aspect of 1,000 additional titles as a subcontractor to two other awardees, was not contrary to 500-title limitation.
 2. Allegation that bidders falsely certified to having arrived at their prices independently is a matter for contracting officer's consideration in determining bidder responsibility not subject to Government Accountability Office's review.
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DECISION

American Printing House for the Blind, Inc. (APH) protests the award of contracts for the production of books on tape to Carolina Talking Books, Inc. (CTB), the American Foundation for the Blind (AFB), and Talking Books Publishers, Inc. (TBP) under invitation for bids (IFB) No. 20060046, issued by the Library of Congress. The protester contends that the IFB provided for the award of no more than 500 titles to a bidder, but that CTB has in effect been awarded over 1,000 titles because both AFB and TBP are subcontracting with CTB for the cassette duplication portion of the work on the titles awarded to them. APH further argues that none of these three bidders--CTB, AFB, and TBP--could truthfully have certified to having arrived at their prices independently.

We deny the protest.

The IFB, which was issued on November 30, 2005, contemplated the award of multiple fixed-price, indefinite-quantity contracts for recording, duplicating, packaging, and distributing books on tapes. The bid schedule identified 10 quantity tiers (1-50 titles, 51-100 titles, and so on up to 451-500 titles), and bidders were requested to furnish a price per minute for recording and a price per cassette for duplicating for each quantity tier up to their maximum capacity. The IFB explained that “the standard title” consisted of 670 minutes of narration, eight recordable compact disks containing a narration review copy, one recordable compact disk containing a Digital Talking Book, and 968 copies of 2.3 cassettes each, for a total of 2,226 cassettes. IFB § B.2. The IFB further explained that extended prices would be calculated by applying unit prices to the quantities contained in the standard title, but that actual contract prices would result “from application [of] bid prices to books assigned” and would “depend on the length of books selected and the number of copies of each required.” IFB § B.3.

The IFB notified bidders that they could not enter into subcontracts without obtaining the consent of the contracting officer and the contracting officer’s technical representative, and contained a clause that bidders could complete to furnish notice of their intention to subcontract.¹ The IFB also contained the standard Certificate of Independent Price Determination (Federal Acquisition Regulation § 52.203-2) at § K.2. This section provided in relevant part as follows:

(a) The offeror certifies that:

(1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to,

(i) Those prices;

(ii) The intention to submit an offer, or

(iii) The methods or factors used to calculate the prices offered.

(2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid

¹ This clause, IFB § K.16, required the bidder to identify “the nature of the work to be subcontracted” and the name and address of the proposed subcontractor.

solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

Five bidders responded to the IFB. Prices submitted were as follows:

Price per minute for narration					
# of Titles	Bidder				
	AFB	APH	CTB	PTB ²	TBP
1-50	\$29.500	\$7.000	\$6.235	\$24.500	\$10.000
51-100	\$13.600	\$7.000	\$5.448	\$19.500	\$9.500
101-150	\$8.750	\$7.000	\$3.945	\$18.750	\$9.000
151-200	\$7.070	\$5.750	\$3.895	\$13.250	\$8.000
201-250	\$6.210	\$5.750	\$4.060	\$11.500	\$7.500
251-300	\$5.690	\$5.500	\$4.338	\$10.250	\$7.000
301-350	\$5.350	\$5.500	\$5.303	\$7.700	\$6.500
351-400	\$5.100	\$5.000	\$8.335	\$6.850	\$6.000
401-450	\$4.930	\$5.000	\$8.335	\$6.000	\$5.500
451-500	\$4.780	\$4.550	\$8.335	\$5.000	\$5.075

Price per cassette for duplication					
# of Titles	Bidder				
	AFB	APH	CTB	PTB	TBP
1-50	\$0.510	\$1.250	\$0.782	\$1.500	\$0.510
51-100	\$0.510	\$1.250	\$0.677	\$1.500	\$0.510
101-150	\$0.510	\$1.250	\$0.567	\$1.400	\$0.510
151-200	\$0.510	\$1.200	\$0.510	\$0.950	\$0.510
201-250	\$0.510	\$1.200	\$0.510	\$0.550	\$0.510
251-300	\$0.510	\$1.200	\$0.510	\$0.550	\$0.510
301-350	\$0.510	\$1.200	\$0.625	\$0.550	\$0.510
351-400	\$0.510	\$1.150	\$0.677	\$0.550	\$0.510
401-450	\$0.510	\$1.100	\$0.730	\$0.550	\$0.510
451-500	\$0.510	\$1.000	\$0.730	\$0.550	\$0.510

² Potomac Talking Book Services, Inc.

Applying the formula set out above, the agency calculated bidders' prices per title as follows:

Price per title					
# of Titles	Bidder				
	AFB	APH	CTB	PTB	TBP
1-50	\$20,900.26	\$7,479.97	\$5,923.39	\$19,754.00	\$7,835.26
51-100	\$10,247.26	\$7,479.97	\$5,161.67	\$16,404.00	\$7,500.26
101-150	\$6,997.76	\$7,479.97	\$3,908.71	\$15,678.90	\$7,165.26
151-200	\$5,872.16	\$6,530.22	\$3,748.19	\$10,992.26	\$6,495.26
201-250	\$5,295.96	\$6,530.22	\$3,858.83	\$8,929.30	\$6,160.26
251-300	\$4,947.56	\$6,362.56	\$4,045.26	\$8,091.80	\$5,825.26
301-350	\$4,719.76	\$6,362.56	\$4,948.59	\$6,383.30	\$5,490.26
351-400	\$4,552.26	\$5,915.81	\$7,097.66	\$5,813.80	\$5,155.26
401-450	\$4,438.36	\$5,804.40	\$7,215.74	\$5,244.30	\$4,820.26
451-500	\$4,337.86	\$5,279.77	\$7,215.74	\$4,574.30	\$4,535.51

Both AFB and TBP identified CTB as their subcontractor for cassette duplication in their bids. On January 20, 2006, the agency awarded AFB a contract for 500 titles, and on January 24, it awarded APH a contract for 44 titles, CTB a contract for 151 titles, PTB a contract for 500 titles, and TBP a contract for 500 titles.

APH protested to our Office on February 21, arguing that because CTB (as a subcontractor) would be performing the duplication portion of the work for the titles awarded to AFB and TBP, it had effectively been awarded 1,150 titles, in violation of the IFB limitation of 500 titles per bidder.³ The protester also argued that it was clear that AFB and TBP had arrived at their prices for cassette duplication after consultation with CTB, and thus none of the three could truthfully have certified to having determined their prices independently.

The protester has cited and we have found no solicitation provision or other legal authority supporting the argument that because AFB and TBP intend to subcontract a portion of the work awarded to them to CTB (that is, duplication of the titles), the titles awarded to AFB and TBP should be regarded as awarded to CTB for purposes of the 500-title cap. In this regard, we note that the awards to be made under the IFB were for titles, for each of which the contractor was responsible for providing both narration and duplication, and there was nothing in the IFB that precluded subcontracting.

³ Pursuant to the protester's theory, the number of titles effectively awarded to CTB should actually be 1,151.

Moreover, while the parties disagree as to the purpose of the 500-title cap, with the agency maintaining that it was intended “to ensure that contractors not take on work greater than their capacity to complete the work, thus jeopardizing [the agency’s] ability to provide books on tape to its blind and physically handicapped patrons,” Agency Memorandum of Law at 4, and the protester contending that the cap’s purpose was to ensure that too large a percentage of the work not go to a particular bidder or bidders so that multiple bidders would remain interested in competing, we do not think CTB’s combined workload, as a contractor to the Library of Congress and as a subcontractor to AFB and TBP, is inconsistent with either purpose. To the extent that the cap was intended to protect against an award exceeding an individual bidder’s production capacity, the agency reports that CTB’s capacity for cassette production is [deleted] per year, which exceeds by a substantial margin the number of cassettes that it will be producing as a prime contractor and as a subcontractor under the contracts at issue here. On the other hand, to the extent that the cap was intended to ensure that too large a percentage of the contract value not be awarded to a single bidder, even when the work that CTB will be performing as a subcontractor is added to the work that it will be performing as a contractor, the total dollar value of the work that it will be performing is less than the dollar value of 500 titles. In this regard, the cassette duplication work accounts for only approximately a quarter of either AFB’s or TBP’s price for a standard title.⁴ When a quarter of AFB’s price for 500 titles (representing the work to be subcontracted to CTB by AFB) is added to a quarter of TBP’s price for 500 titles (representing the work to be subcontracted to CTB by TBP), and that sum is then added to CTB’s total price for 151 titles (the number of titles awarded to CTB directly), the result is still less than any bidder’s total price for 500 titles. In other words, CTB is not getting an unduly large share of the overall work.

Regarding the protester’s contention that it is clear from the fact that AFB and TBP bid the same price for tape duplication that they both consulted with CTB regarding their pricing for this portion of the work, and that their certifications that they arrived at their prices independently must therefore be false, such an allegation is not for consideration by our Office, but, rather, is a matter for the contracting officer to consider in determining bidder responsibility. U-Liners Contracting Co., Inc., B-245179.2, Oct. 24, 1991, 91-2 CPD ¶ 370 at 1-2. We will review an affirmative determination of responsibility—as was made by the contracting officer with regard to the bidders in question—only where it is alleged that definitive responsibility criteria in the solicitation were not met or evidence is identified that raises serious doubts that, in reaching a particular responsibility determination, the contracting

⁴ Since a standard title consists of 670 minutes of narration and 2,226 cassettes, AFB’s price for the narration portion of the work was \$3,202.60 ($\4.780×670) and its price for the duplication portion of the work was \$1,135.26 ($\$.51 \times 2,226$). Similarly, TBP’s price for the narration work was \$3,400.25 ($\5.075×670) and its price for the duplication work was \$1,135.26.

officer unreasonably failed to consider available relevant evidence or otherwise violated statute or regulation. Bid Protest Regulations, 4 C.F.R. § 21.5(c) (2006); Government Contracts Consultants, B-294335, Sept. 22, 2004, 2004 CPD ¶ 202 at 2. There is no allegation here that definitive responsibility criteria were not met, nor is there any evidence that the contracting officer unreasonably failed to consider relevant information or otherwise violated statute or regulation in determining AFB, TBP, or CTB responsible.⁵

The protest is denied.

Anthony H. Gamboa
General Counsel

⁵ We also agree with the agency that, in any event, there is no evidence of collusion among the bidders here. While it is true that CTB knew the price at which it had offered to perform the duplication work for AFB and TBP, there is no evidence that it knew that the other bidders would quote that precise price, without any mark-up or mark-down, in their bids. There is also no evidence that the other bidders knew the prices that CTB would bid for the duplication services, or that any of the three communicated with any other of the three with regard to the prices that it intended to offer for narration. Moreover, while it is also true that CTB may have had information that the protester did not have regarding the intention of AFB and TBP, which had apparently bid jointly in the past, to submit separate bids, there is no evidence that any information regarding the intention to submit separate bids was conveyed for the purpose of restricting competition. See FAR § 52.203-2(a)(1).