

Protest of)
) Date: August 8, 1988
 DRY STORAGE CORPORATION)
)
 Solicitation No. 169990-88-A-0013) P.S. Protest No. 88-37

DECISION

Dry Storage Corporation (Dry Storage) protests the contracting officer's determination that its bid under Invitation For Bids No. 169990-88-A-0013 (the IFB) was nonresponsive. The IFB, issued by the Central Procurement & Material Management Service Center on May 5, 1988, sought bids for warehouse services within the DuPage County and Cook County geographical area.

Section A-3 of the IFB contained the following pricing schedule:

Offerors must provide the following pricing information for year 1 of the contract based on the estimated monthly quantities indicated:

		<u>ESTIMATED MONTHLY QUANTITY*</u>	<u>UNIT</u>	<u>UNIT PRICE</u>	<u>TOTAL MONTHLY CHARGES</u>
a.	Monthly storage rate **	25,000	SQ FT	___	___
b.	One time handling charge for <u>receipt and shipment</u>	250	CWT	___	___
c.	Admin./paperwork/labeling charge <u>per shipment</u>	100	EACH	___	___
d.	Special Handling Services (See Note 1)	40	HOURLY	___	___
TOTAL MONTHLY COST					___

(*) The estimated average monthly quantities are based on the best available information and does not constitute a guarantee on the part of the Postal Service. Peak space requirements can be expected to occur within 60-days after award and trend downward as equipment is re-deployed or otherwise disposed of. The Postal Service is obligated only to the extent of the shipments and quantities actually tendered for storage, handling and shipping.

(**) The monthly storage rate must be billed only for floor space actually occupied by Postal Service equipment. Offerors must price this item to allow for any additional space needed for aisles, setbacks, etc.

NOTE 1: The hourly rate for SPECIAL HANDLING SERVICES, when authorized, is for work which would not be performed under the "ONE TIME HANDLING CHARGE" (A-3.b).

Three bids were opened on May 27. The Abstract of Bids Received recorded Dry Storage's bid as \$51,650 per month, Morrison-Knudsen Services as \$20,151.80,^{1/} and New Breed Transfer Corp., the intended awardee, at \$41,500. The contracting officer considered Dry Storage's bid nonresponsive based on the additional sheet which it attached to the IFB.

Dry Storage inserted prices for all blank lines and inserted beneath the estimated monthly quantity of 250 CWT for sub-item b the words "25,000 Shipment".

One page before the pricing schedule, Dry Storage attached a new page to the IFB, which stated:

Preparation of Rates

Storage: 25,000 square feet @ \$1.33/square foot, includes all aisles, dock, and common areas. Our rate is based on our estimate that we will utilize approximately 12,500 square feet for storage and 12,500 square feet for aisles, etc.

Handling: Based on average receipt and shipment of 25,000 lbs., and 100 shipments per month.

Administrative: Our cost/shipment is based on our estimate that we can process a shipment in approximately 15 minutes.

^{1/}Morrison-Knudsen Services bid was rejected because its warehouse was not located within the geographical area required by the IFB.

In addition, Dry Storage submitted a cover letter to its bid, and stated that its warehouse was a "high-cube/high-density racked building." Dry Storage further stated:

What this means is that we can offer 36 [feet] clear ceilings versus normal warehouse buildings that have 16 [feet] to 18 [feet] ceilings. All of this equates to greater space utilization and less square footage used. In fact, our space estimate for your central warehouse would be roughly less than 50% of your current figure, or 12,500 occupied square feet.

There is a cost-differential involved in the cost per square foot. Our cost/square foot may initially appear high versus the competition, but your actual occupied footage will be approximately 50% less. Also, you would be afforded maximum pallet/cube utilization at our facility which would most likely decrease your occupied square footage.

By letter of June 2, the contracting officer advised Dry Storage that its bid was considered nonresponsive and would not be considered for award. Dry Storage responded by letter of June 3, contending that it had attempted to provide a firm bid, and that it had hoped if its bid were not understood that it would be so informed and given a chance to explain the details inserted in its proposal. Dry Storage contended that the additional sheet attached to the IFB was provided "in the hope that some of the items, which were not easily understood in your request, could be identified as potential 'misunderstandings'." Dry Storage then addressed the areas which the contracting officer considered to be nonresponsive.

In the same letter, Dry Storage revised its bid price. Dry Storage stated that its bid for handling charges was based upon 100 shipments per month of items weighing 25,000 pounds each. Dry Storage stated that it had mistakenly assumed that each shipment was going to be 25,000 pounds, though it now appeared that monthly volume would be 100 shipments of items weighing 250 pounds each. Dry Storage thus revised its bid price to a total monthly cost of \$35,067.50, which would have displaced New Breed Transfer Corp.'s low bid of \$41,500 per month. Dry Storage stated that it considered the exclusion of its bid unfair and that it believed its bid should not have been disqualified.

The contracting officer treated Dry Storage's June 3, letter as a protest and referred it to this office pursuant to Postal Contracting Manual (PCM) 2-407.8(e). The contracting officer also submitted a report to this office addressing the points raised by the protester.

The contracting officer properly rejected Dry Storage's bid as nonresponsive. The test of responsiveness is:

whether the bid as submitted is an offer to perform, without exception, the exact thing called for in the invitation and upon acceptance will bind the contractor to perform in accordance with all the terms and conditions thereof.

Sensory Electronics, Inc., P.S. Protest No. 87-124, January 21, 1988; Data Switch Corporation, et al., P.S. Protest Nos. 85-4, 85-5, April 29, 1985. The responsiveness of a bid must be determined from material available at bid opening; post-opening explanations cannot be considered to correct a nonresponsive bid, even if a lower price could be obtained by accepting the corrected bid. Pease Management and Construction, Inc., P.S. Protest No. 86-68, October 24, 1986. In determining responsiveness, we look at the legal obligation to perform according to the terms of the IFB, and not the bidder's current willingness to perform. See Mattox Motor Service, P.S. Protest No. 83-36, August 12, 1983. This rule maintains the integrity of the competitive bidding system by treating all bidders fairly and not allowing any contractor "two bites" at the apple after bid opening. Government Contract Services, Inc; Daly Construction, Inc., P.S. Protest No. 85-95, January 21, 1986.

With these principles in mind, clearly Dry Storage's bid is nonresponsive. The pricing schedule advises bidders that the price for the monthly storage rate "must be billed only for floor space actually occupied by Postal Service equipment." The IFB states that an estimated monthly quantity of 25,000 square feet of floor space will be required. Dry Storage's attached "Preparation of Rates" sheet states that its storage rate is based on using "approximately 12,500 square feet for storage and 12,500 feet for aisles, etc." The cover letter accompanying Dry Storage's bid also states that because of the height of its warehouse, it could store in 12,500 square feet of occupied floor space what normal warehouses store in 25,000 square feet of occupied floor space. The contractor's bid price is thus a price for only 12,500 square feet of actually occupied storage space.^{1/} The IFB, however, requested a price for 25,000 square feet of actually occupied storage space. Because the contractor did not submit a price for 25,000 feet of actually occupied floor space, its bid was properly rejected as nonresponsive.^{1/} Although Dry Storage's cover letter requested the contracting officer to inquire if he had any questions as to its bid, such inquiry would not have been permissible since it would have provided Dry Storage with "two bites" at the apple.

^{2/}The contractor could not properly assume that, because its warehouse permitted double-stacking, its quote for one-half the area of occupied floor space would be acceptable. The contracting officer advises that some of the equipment which was to be stored may not lend itself to stacking or palletization.

^{3/}Since we find Dry Storage's bid nonresponsive on this basis, there is no need to reach the other issues in the protest.

The protest is denied.

William J. Jones
Associate General Counsel
Office of Contracts and Property Law