

Protest of) Date: May 4, 1989
AHJ TRANSPORTATION, INC.)
Under Solicitation NO. 980-11-89) P.S. Protest No. 89-18

DECISION

AHJ Transportation, Inc. (AHJ) timely protests the contracting officer's determination that it is a nonresponsive bidder under Solicitation No. 980-11-89 issued by the Seattle, WA, Transportation Management Service Center (TMSC). The solicitation, issued on November 28, 1988, sought bids for the highway transportation of mail between Kodiak, AK and the Kodiak Airport with the specification that separate rates be stated for service under Part A and Part B.^{1/} Section 9D of the solicitation, Submission of Bids, contained the statement, "ALL BIDS MUST BE EXPRESSED AS A SEPARATE RATE FOR PART A AND PART B PER TRIP -- NOT AS A LUMP SUM." Six bids were received by the time of bid opening on January 11. The bid submitted by AHJ stated an annual rate of \$60,000 without a breakdown for the rate per trip for the service required by Part A and Part B.

By letter of February 16, 1989, the contracting officer informed AHJ that its bid was nonresponsive and, therefore would not be given further consideration. By letter of February 22 to the contracting officer, AHJ protested that determination stating that in the past the Postal Service had allowed a contractor to break down his annual bid to a per trip bid. Further, AHJ argues that enforcement of the per trip requirement eliminates four of the six submitted bids and that the two remaining bids do not constitute adequate competition. The protest was forwarded to this office for resolution.

In his statement to this office, the contracting officer indicates that AHJ's bid was nonresponsive because it failed to comply with the solicitation's requirement that all bids state separate rates for service under Part A and Part B. The contracting officer states that the differing service requirements under the two parts makes it impossible to determine what the per trip rate for the individual parts would be.

^{1/} The schedule and frequency section of the Specifications included two routes labeled Part A and Part B. Several of the Part A trips included an intermittent stop between the airport and Kodiak at the local Coast Guard station which increased the mileage. Additionally, the frequency under the two parts differed.

Discussion

The contracting officer properly rejected AHJ's bid as nonresponsive. The test for responsiveness applied by this office 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.

Dry Storage Corporation, P.S. Protest No. 88-37, August 8, 1988. The responsiveness of a bid must be determined from material available at bid opening; post-opening explanations cannot be considered to correct the nonresponsiveness of the bid. Tompkins & Associates, P.S. Protest No. 88-58, December 30, 1988; Pease Management and Construction, Inc., P.S. Protest No. 86-68, October 26, 1986. In determining responsiveness, we look at the legal obligation to perform according to the terms of the Invitation to Bid. Dry Storage Corporation, supra. Responsiveness maintains the integrity of the competitive bidding system by treating all bidders fairly through application of the "firm bid rule" which avoids improperly affording bidders "two bites at the apple." Government Contract Services, Inc; Daly Construction, Inc., P.S. Protest No. 85-95, January 21, 1986.

Applying these principles to the present case, AHJ's bid is clearly nonresponsive. AHJ's failure to state a trip rate in this instance does not bind it to a rate for any extra trips which might be required pursuant to Section 14, Extra Trips, of the solicitation. Due to the difference between the schedule and frequency requirements of Part A and Part B, the individual per trip rate could not be established by the contracting officer based on the information contained in AHJ's bid. The contracting officer was precluded from seeking a clarification from AHJ, see Pease Management and Construction, Inc., supra, and therefore AHJ's bid did not bind it to perform in accordance with all the terms and conditions of the solicitation. Dry Storage Corporation, supra.

AHJ's allegation that two responsive bids do not constitute adequate competition is not consistent with our holding in Shuford Mills, Inc., P.S. Protest No. 83-49, November 8, 1983, where we determined two responsive bids are adequate competition if there has been significant effort to obtain competition, a reasonably priced bid is received, and there is no deliberate attempt to exclude a particular firm. The protester has not alleged, and the file does not substantiate, any deficiencies in the solicitation of offers other than the literal number of responsive bids.

The protest is denied.

[checked against original JLS 5/11/93]

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