

November 2, 1995

P.S. Protest No. 95-38

MARKIM TRUCKING

Solicitation No. 980-111-95

DIGEST

Protest against correction of bids which displaced protester's bid is denied where the mistakes and the bids actually intended were evident from the bids and the solicitation; protest against denial of protester's request to allow correction of his bid is sustained.

DECISION

Mr. E. J. Klaudt, doing business as Markim Trucking, protests the contracting officer's revision of the abstract of bids on a solicitation for the highway transportation of mail.

Solicitation No. 980-111-95 was issued June 6, 1995, by the Western Area Distribution Networks Office, Seattle Branch, seeking sealed bids for the transportation of mail between the Salem, OR, Processing and Distribution Facility and the Portland, OR, Air Mail Facility.

Service was to include trips on various schedules. The solicitation described a total of 1,057 annual one-way trips, involving 67,465 estimated annual miles and 1,476 estimated annual hours.¹

Section 9 of the solicitation, Submission of Bids, stated, in part, as follows: "Bids are not to be expressed as a lump sum. All bid rates must be expressed as: Per Trip[.]" Bids were to be submitted on PS Form 7405, which included the statement: "Bid . . . must be submitted on a single annual rate basis unless the solicitation specifically calls for bids ... at a per mile, per piece, per trip, or other unit rate." Bidders were instructed to include with their bids a completed copy of Postal Service Form 7468-A, Highway Transportation Contract -

¹ There were five trips; one on each of the frequencies 5x (Friday except Friday holidays), K567 (daily except Fridays, Saturdays, Sundays, and holidays), and K7 (daily except Sundays and holidays), and two on the frequency K67 (daily except Saturdays, Sundays, and holidays).

Bid or Renewal Worksheet. The information on the form "establishes the base from which the rate of compensation may be adjusted during the term of the contract."

Thirteen bids were opened on August 4. The protester submitted a bid on a per trip basis, eleven bidders submitted bids expressed as annual rates, and one bidder submitted a bid including both an annual rate and a price per trip. An initial bid abstract listed the rates bid in ascending order; it set out the per trip bid of the protester, \$36.79, followed by the twelve annual rate bids (including the bid which listed both round trip and annual rates), ranging from \$27,619.56 to \$51,384.95.

The contracting officer's statement asserts that when it was discovered that most of the bids had been expressed as annual rates, the mistakes were called to the bidders' attention. The bidders were afforded the opportunity to convert their annual bid rates to per trip rates by dividing their annual rates by the annual number of estimated trips. A new abstract was issued containing the bids as so revised, which showed that seven of the corrected bids were lower than the protester's bid.

By letter dated August 21, Mr. Klaudt sought to correct his per trip bid. He noted that his worksheet showed an annual contract cost of \$29,652,² and that that amount, divided by 1,057 annual trips, should have resulted in a per trip rate of \$28.04. The bidder had erred by adding up the annual trips associated with the four different trip frequencies for a total of 805.99 annual trips, overlooking that there were two trips at the K67 frequency. The worksheet accompanying Mr. Klaudt's bid included a calculation which divided the annual cost figure by 806 trips to arrive at the per trip bid of \$36.789. If corrected as requested, the bid would have been third low, behind two of the corrected annual rate bids.

Mr. Klaudt's August 24 protest objected to the issuance of the revised bid abstract, noting that the solicitation provided that bid rates were to be expressed as "per trip," and that he was the only one to do so. The protester asserts that at some time in 1993 or 1994 he had had an otherwise low bid for a route in Washington state rejected because it had been expressed as an annual rate, rather than per trip.

The contracting officer's from statement contends that it was appropriate to allow the annual rate bidders to correct their bids, since the actual per trip rates were ascertainable from information contained within the bids, and Procurement Manual (PM) 12.7.6 allows the correction of bids, even if the correction displaces other bids, if the existence of the mistake and the bid actually intended are discernable from the bid itself. The contracting officer asserts that his office has been unable to identify the earlier solicitation to which the protester refers. Award has been deferred pending resolution of the protest.

The contracting officer notes that by letter dated August 25, he denied Mr. Klaudt's request to reform his bid. The letter asserted that the bidder's choice of a number of trips other than the number stated in the solicitation was a business decision, rather than a correctable mistake.

Mr. Klaudt submitted comments on the contracting officer's report, contending that since the annual rate bids were corrected, his error in calculating his per trip rate should be similarly

² The miles and hours used on the worksheet are consistent with the solicitation's estimated annual miles and hours.

corrected.³

DISCUSSION

The protester's contention that the annual rate bids may not be corrected is incorrect. PM 12.7.6 b.3. governs the correction of mistakes in bids such as those alleged here, and states, in part:

When . . . clear and convincing evidence establishes both the existence of a mistake and the bid actually intended, a determination permitting the bidder to correct the mistake may be made; provided that, if such correction would result in displacing one or more lower bids, the determination may not be made unless the existence of the mistake and the bid actually intended are ascertainable substantially from the solicitation and the bid itself.

It is well-settled that when a corrected bid displaces one or more other bids, the "asserted correct bid must result from the only reasonable interpretation ascertainable from the bid itself or on the basis of logic and experience." *Pamela Jean Johnson*, P.S. Protest No. 95-36, October 6, 1995, quoting *Peck Iron & Metal Co., Inc.*, 69 Comp. Gen. 534, June 14, 1990.

"The weight to be given the evidence submitted to establish a mistake in bid is a matter for the consideration of the contracting officer, and his determination will not be disturbed unless it is shown to be without a reasonable basis." *Pamela Jean Johnson, supra; D.F. & L. Construction, Inc.*, P.S. Protest No. 78-40, September 15, 1978.

The information available to the contracting officer the bid packages, including the worksheets,⁴ of the lowest bidders was more than sufficient to support the determination that the bids were in error and that the intended per trip rates could be determined from the bid packages. Accordingly, the correction of those errors was reasonable and consistent with the PM. The fact that correction was previously determined to be inappropriate under similar circumstances does not prevent the correction here.

The issue of the correction of Mr. Klaudt's bid, raised in the contracting officer's statement, warrants brief comment. Mr. Klaudt's mistake should have been apparent from the bid and its accompanying worksheet, since the per trip rate bid, multiplied by the correct number of trips as stated in the solicitation, yields a figure much greater than the total annual rate set out on the bidder's worksheet. PM 12.7.6 b.1 directs the contracting officer, after bids are opened, to examine all bids for mistakes, and to call suspected mistakes to the attention of bidders so that the bidders may verify or correct their bids, and 12.7.6 b.3.(b) sets out in detail the nature of the process involved. The contracting officer's failure to invoke that process with respect to Mr. Klaudt's bid remains unexplained.

³ In the course of his comments, Mr. Klaudt expresses some confusion concerning the correct number of annual trips, noting at one point that he thinks "the figure of 806 trips has more merit than 1075.45."

⁴ All documents comprising the bid package may be considered in making that determination. *George E. Failing Company*, Comp. Gen. Dec. B-233207, 89-1 CPD 203, February 24, 1989.

The contracting officer appears to understand the bidder to have deliberately premised his bid on accomplishing only 806 trips per year, rather than the greater number contemplated by the schedule set out in the solicitation. As discussed above, however, that understanding is incorrect because the bidder's worksheet establishes an annual rate which reflects all of the hours and miles associated with the correct number of trips. In this circumstance, the use of the wrong number of trips to convert the annual rate to a per trip rate was a mistake, not a deliberate undertaking, and the contracting officer's conclusion to the contrary lacks a reasoned basis. Because the existence of the mistake and the bid actually intended are ascertainable from the solicitation and the bid itself, Mr. Klaudt should be allowed to correct his bid, placing him third in line for award.

The protest is sustained as to the correction of Mr. Klaudt's bid, and is otherwise denied.

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Contract Protests and Policies