Protest of	)	Date: December 24, 1987
	)	
L. R. DORSEY, INC.	)	
	)	
Solicitation No. 239986-87-A-0072)	P.S. Protest No. 87-125	

DECISION

L. R. Dorsey, Inc. (Dorsey), timely protests the contracting officer's rejection of its bid submitted in response to Solicitation No. 239986-87-A-0072.

Background

Solicitation No. 239986-87-A-0072, issued October 14, 1987, by the Facilities Service Office in Columbia, MD, called for bids for term construction services. The solicitation contains a price schedule which sets out a unit price for each of a large number of construction tasks; work orders issued under the contract represent combinations of the tasks listed in the price schedule. Subject to a minimum of $10,000 for the life of the contract, the price paid the contractor for any given work order is determined by applying a multiplier -- the figure quoted by each bidder -- to the dollar amount determined by reference to the price schedule. For example, if a work order required installation of a traffic control sign during working hours, and if the contractor's multiplier were .900, the price for the work order would be .900 times the unit price of $42.55 (page 53 of the price schedule), or $38.30.

Dorsey's bid was one of three bids recorded at bid opening on October 27. By letter dated October 29, the contracting officer informed Dorsey that its bid was being rejected as nonresponsive because it presented its bid as a percentage, rather than as a multiplier. The contracting officer noted that a bid stated as a percentage was contrary to instructions in PS Form 7389, Instructions to Bidders, which also warned that bids showing percentages as multipliers would be rejected. Also on October 29, the contracting officer accepted the bids submitted by the other two bidders.

In a letter to the contracting officer dated November 7, Dorsey protested the rejection of its bid, asserting that, regardless of

the instructions, there could have been no misunderstanding of its bid. The contracting officer referred Dorsey's protest to this office pursuant to Postal Contracting Manual (PCM) 2-407.8 e.

The contracting officer contends that Dorsey's protest is without merit, as the use of percentages is absolutely forbidden by the solicitation documents. Paragraph 15 of PS Form 7389 provides several examples of appropriate bid multipliers, explaining how they may be derived from dollar prices and percentages. Subparagraph D. of paragraph 15 states:

> DO NOT use percentages to show the multiplier. Any bid submitted showing percentages as the multiplier will be rejected.

(Emphasis in original.) Further stress is laid upon the form of the bid in paragraph 8 C. of PS Form 7387, Invitation for Bid, which calls the reader's attention to paragraph 15 of Form 7389.

Cravens Construction Company, Inc. (Cravens), one of the two successful bidders, submitted comments on Dorsey's protest. Cravens notes that the solicitation's instructions were clear with regard to the use of percentages. It also asserts that Dorsey would not be the low bidder even if it were permitted to change its bid from 97.5 percent to .975.

Discussion

Dorsey's protest raises the issue of whether the contracting officer's prescription of a multiplier bid, combined with a warning that a bid stated as a percentage will be rejected, warrants the rejection of a percentage bid as nonresponsive.[1/] We note that both the strict requirement of a multiplier bid and the rejection warning for percentage bids -- which are presumably designed to ensure clarity and comparability in bids -- are required by Postal Service directives. See REEB Bulletin No. DC- 84-1, January 6, 1984, section VI. C., Enclosure B.

A bid that fails to meet the "essential requirements of the invitation for bids~ must be rejected. PCM 2-404.2(a). However, a minor informality or irregularity, "one which is merely a

matter of form or is some immaterial variation from the exact requirements of the invitation for bids . . .,~ should either be corrected by the bidder or waived by the contracting officer. PCM 2-405.

A warning in a solicitation to the effect that failure to comply with a stated requirement will result in bid rejection will not of itself render a nonconforming bid nonresponsive. For

[1/] Cravens' observation that, even at a multiplier of .975,Dorsey's bid would not be low, is correct but not relevant here. The contracting officer reserved the right to make multiple awards, paragraph 8 C. of PS Form 7387, and in fact awarded two contracts on the basis of the solicitation. Oneawardee, Cravens, bid a multiplier of .892; the other,Coffey Construction Company, Inc., bid 1.02.

example, we have held that a bid should not be rejected for failure to include a certification of a visit to the work site, despite a warning that "[f]ailure to submit above certification and verification shall render your bid nonresponsive.~ B. Fontana & Sons. Inc., P.S. Protest No. 76-31, June 30, 1976.[1/]

Dorsey's bid clearly did not take the form required by the solicitation. Nevertheless, we conclude that it is responsive. The bid of 97.5 percent can readily be converted to a multiplier of .975, whether by using the conversion method illustrated in paragraph 15 of PS Form 7389, or by reference to a dictionary definition of "percent,~ "reckoned on the basis of a whole divided into one hundred parts.~ Webster's Ninth New Collegiate Dictionary (Meriam-Webster Inc. 1984) at 872. Where, as here, a bid price stated in an inappropriate form can be converted to the proper form by application of a standard mathematical formula,[1/] the form of the price does not render the bid nonresponsive. Della Pello Contracting Co.. Inc. and Dosch-Kina Company, P.S.Protest No. 80-68, November 21, 1980. Thus, the protest must be sustained.

Because the solicitation allows for multiple awards, we remand the matter to the contracting officer for further action consistent with this decision.

[2/]The Comptroller General has, on occasion, given weight to a solicitation's sternly stated requirements in determining whether a deviation from such requirements is material. For example, in 43 Comp. Gen. 206, the submission of a list of subcontractors was held to be a material requirement, despite its lack of effect on the successful bidder's obligations under the resulting contract. There, however, the Comptroller General recognized that the requirement had been included in the solicitation to combat the problem of bid shopping. By contrast, the proscription of percentage bids appears to be designed only to standardize the form of bids, or to avoid ambiguities; the contracting officer has offered no explanation for the requirement.

[3/] Had Dorsey submitted a bid of ~97.5~ without adding the word "percent," its bid would present another issue, one that we do not reach in the instant protest.

The protest is sustained.

[signed Norman D. Menegat for:]

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

[Compared to original 6/6/94 WJJ]