

October 6, 1995

P.S. Protest No. 95-36

PAMELA JEAN JOHNSON

Solicitation No. 980-122-95

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.

DECISION

Ms. Pamela Jean Johnson protests her failure to receive the award of a contract for the highway transportation of mail.

Solicitation No. 980-122-95 was issued June 26, 1995, by the Western Area Distribution Networks Office, Seattle Branch, seeking sealed bids for the transportation of mail between the Billings, MT, General Mail Facility, and the Billings airport.

Service was to comprise varying numbers of trips, of which some were to be performed seven days a week and others were to be performed daily except Sundays and daily except Sundays and Mondays. The solicitation described the total estimated number of annual round trips as 6,992, involving 52,440 estimated annual miles and 8,126 estimated annual hours.

The solicitation stated that "the schedule of departures and arrivals may be changed by the administrative postmaster or contracting officer to conform to airline schedules and service requirements," and provided for the contractor to perform any extra trips ordered by the contracting officer.

Section 9 of 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 Round Trip[.]" Bids were to be submitted on PS Form 7405. A legend on the box which the bid amount was to

be entered stated as follows: "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 - 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."

Twenty bids were opened on July 26. Eight bidders submitted bids in terms of round trips, ten bidders submitted bids expressed as annual rates, and two bidders, including Ms. Johnson, submitted bids including both an annual rate and a price per round trip. An initial bid abstract listed the rates bid in ascending order; it set out the eight round trip rate bids, ranging from \$28.49 to \$77.38, followed by the twelve annual rate bids (including the two bids which listed both round trip and annual rates), ranging from \$154,942.98 to \$337,040.37.¹

The contracting officer's statement asserts that "it was apparent from the face of [the ten annual rate] bids[] that the bidders had used the estimated number of miles . . . in . . . and hours . . . stated in the solicitation in calculating their annual prices. Since the bidders' worksheets used the projected numbers of miles and hours in developing the annual cost, we were able to determine, without being provided additional information, the bid rate on a per round trip basis, by dividing the stated annual rate on the bid by the estimated number of round trips"

Once these calculations were performed, each of the annual rate bidders was contacted and asked to provide "the numbers of estimated round trips they . . . utilized in determining the annual rate of their bids." Each bidder provided information consistent with the contracting officer's calculations.

A revised abstract restating the annual rate bids as round trip bids was prepared on August 8 and was distributed to the bidders. It reflected that two bidders had submitted bids at round trip rates less than the round trip rate of Ms. Johnson. This protest followed.

The protest objects to the reformulation of the annual rate bids which displaced Ms. Johnson's bid. The protester contends that "what is in the bid packet must mean something" and that in another instance, a bid which was stated on the wrong basis had been rejected even though it would have resulted in the lowest cost.

The contracting officer's statement makes three contentions. First, the annual rate bids were responsive to the solicitation, when the bid was read in its entirety and given a reasonable interpretation. The contracting officer cites *Peck Iron & Metal Co., Inc.*, 69 Comp. Gen. 534, June 14, 1990, as a comparable situation.²

¹ The bids which subsequently displaced Ms. Johnson's bid contain no express evidence that they were submitted on an annual rate basis or any other basis, since the bid amounts were expressed only as dollar amounts, unaccompanied by any explanation. The contracting officer's conclusion that the bids were intended as annual rate bids apparently resulted both from the large amount of the bids, unrealistically high as round trip rates, and the fact that the amounts were the same as those stated in terms of annual cost on the worksheets which accompanied the bids.

² The decision recites the well-known principle that when the corrected bid displaces one or more other

Second, the contracting officer cites Procurement Manual (PM) 12.7.6 b.3.(a)(3).³ According to the contracting officer, "the mistake made was the form . . . of the rate offered . . . and the existence of the mistake and the intended bid were clear, and able to be ascertained solely from the solicitation and the bid itself."

Third, the contracting officer contends that where the round trip rates were easily determined from the solicitation and the bids, the error was a minor informality or irregularity which PM 12.7.6 a. allows the contracting officer to waive.⁴

The protester has replied to the contracting officer's statement, raising three principal points. First, she states that she spoke with persons in the Dallas, TX, contracting office, who advised her of their understanding that bids so submitted would be considered improperly filled out and not for consideration. According to the protester, bids in Texas and Louisiana have been rejected on that basis, and it is improper for different offices to handle the same situation differently. Second, she states that the substitution of an annual rate figure for a round trip figure is a deliberate act which should not be considered "an accidental mistake." Finally, she contends that these mistakes are not minor informalities subject to correction under PM 12.7.6 a.

Another bidder submitted comments in support of the protest.

bids, both the existence of the mistake and the bid actually intended must be discernable from the face of the bid itself, and states that the "asserted correct bid must result from the only reasonable interpretation ascertainable from the bid itself or on the basis of logic and experience."

³ The cited section allows the contracting officer to correct a mistake in bid when the bidder requests the correction, and "clear and convincing evidence establishes both the existence of a mistake and the bid actually intended." Where the "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."

⁴ The cited section allows the contracting officer to waive minor informalities or irregularities which are "merely a matter of form or . . . some immaterial variation from the exact requirements of the solicitation, having no effect or merely a trivial or negligible effect on price, quality, delivery, or performance . . . and the correction or waiver of which would not affect the relative standing of the bidders or be otherwise prejudicial to them."

DISCUSSION

The protester's assertion that the bid package "must mean something" and precludes correction of the erroneous bids is incorrect. PM 12.7.6 b.3., cited by the contracting officer, governs the correction of these mistakes.⁵ If the existence of the mistake and the bid actually intended were clear and ascertainable solely from the solicitation and the bid, the bid may be corrected, even though it might displace a lower bid.

"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." *D.F. & L. Construction, Inc.*, P.S. Protest No. 78-40, September 15, 1978. The information available to the contracting officer from the bid packages of the two lowest bidders was more than sufficient to support the determination that their bids were in error and that their intended round trip rates could be determined from the bid packages.⁶ Accordingly, the correction of those errors was consistent with the regulation.

The fact that another contracting office believes that correction is not appropriate under similar circumstances, or indeed that another contracting office may have handled a similar situation differently, does not preclude the action which was taken here.⁷

The protest is denied.

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Contract Protests and Policies

⁵ Because the errors affected the prices offered, these were not minor irregularities or informalities governed by 12.7.6 a.

⁶ 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.

⁷ The protester's assertion that other contracting officers had rejected bids expressed on an annual rather than a per trip basis was too vague to allow its verification.

Review fails to disclose any prior decisions of this office directly on point. *Dennis Truck Line Company of Ohio*, P.S. Protest No. 95-10, May 10, 1995, involved objections to the correction of an annual rate bid to a bid on the basis of a rate per mile, but the decision failed to reach the merits because the protest was untimely raised. *Ebony Express, Inc.*, P.S. Protest No. 92-27, July 7, 1992, involved the cancellation of a solicitation when only five of 31 bids received were expressed on a per round trip basis as required, and the rest were stated as annual rates, concluding that the contracting officer's determination to reject all bids was not shown to be arbitrary or capricious.