

Protest of)
JEM DEVELOPMENT CORPORATION) Date: July 16, 1987
Solicitation No. 209986-87-A-0068) P.S. Protest No. 87-65

DECISION

JEM Development Corporation (JEM) has timely protested the contracting officer's determination that Electric Equipment Service Corporation (EESC) is the low responsive bidder under Invitation for Bid (IFB) No. 209986-87-A-0068, that EESC failed to acknowledge receipt of a material amendment to the solicitation.

IFB No. 209986-87-A-0068, issued May 14, 1987, by the Facilities Service Office, Louisville, KY, sought bids for the installation of new transformers at the main post office in Toledo, Ohio.

As issued, the solicitation included the Department of Labor's General Wage Decision No. OH87-28, dated February 27, 1987. Two amendments to the solicitation were issued. Amendment No. 01 issued May 14, contained the General Wage Decision No. OH87-28, as modified May 8, 1987. Amendment No. 02, a modification to General Wage Decision No. OH87-3, was issued June 5 by the Facilities Service Office. When bids were opened June 23, EESC's bid of \$91,218 was the lowest of four bids received.

JEM's bid was second low at \$102,186. After reviewing the bid abstract, JEM concluded that EESC's bid should have been found nonresponsive because of the notation made by a bid opening official regarding EESC's failure to acknowledge Amendment No. 02. The contracting officer waived EESC's failure to acknowledge Amendment claiming No. 02 as a minor informality. This protest followed on June 25.

Discussion

When a bidder fails to acknowledge receipt of an amendment affecting price, quantity, quality, delivery, or the relative standing of bidders prior to bid opening, the bid is rendered nonresponsive. Air Conditioning, Plumbing and Heating Service Co. Inc., P.S. Protest No. 80-7, April 21, 1980; accord Pearson Construction Co., Ltd., P.S. Protest No. 86-24, May 19, 1986. Conversely, failure to acknowledge receipt of an amendment not affecting price, quantity, quality, delivery, or the relative standing of bidders can be waived as a minor informality. See Somers Construction Company,

Inc., P.S. Protest No. 76-23, June 9, 1976; Postal Contracting Manual 2-405 (3).

This office finds that EESC's failure to acknowledge receipt of Amendment No. 02 is a minor informality, and, therefore, waivable by the contracting officer. The record indicates that Amendment No. 02 is a modification to General Wage Decision No. OH87-3, applicable to the counties of Mahoning and Trumbull. The solicited project is not to be performed in either Mahoning or Trumbull, but, instead, Lucas County. The applicable General Wage Decision No. OH87-28 for Lucas County was included in the IFB, and a modification to it was sent out in Amendment No. 01. The bid abstract notes that EESC acknowledged receipt of Amendment No. 01.

Since EESC acknowledged receipt of Amendment No. 01, and EESC's failure to acknowledge receipt of Amendment No. 02 did not affect price, quantity, quality, delivery, or the relative standing of bidders, the contracting officer correctly found EESC's bid responsive.

The protest is denied.

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

[Compared to original 3/8/93 WJJ]