

Protest of )  
MID-AMERICA ELEVATOR CO., INC. ) Date: August 11, 1987  
Solicitation No. 169991-87-A-0238 ) P.S. Protest No. 87-73

### DECISION

Mid-America Elevator Co., Inc. (Mid-America) protests the award of a contract for elevator repair work in the Indianapolis, IN main post office to Cavinder Elevator (Cavinder). Mid-America claims that Cavinder's bid was nonresponsive and, therefore, was not eligible for award.

Solicitation No. 169991-87-A-0238 was issued on April 20, 1987, with an offer due date, as amended, of May 21. The solicitation required bids on two separate line items, premaintenance repairs and monthly maintenance services over a three-year period. The line item for premaintenance repairs required the bidder to bid on furnishing:

all materials, labor, supervision, tools, and equipment necessary to make those repairs required to which place the elevator equipment listed in Exhibit A hereto near its original state of repair and operation before placing on maintenance, and under which the contractor will accept full responsibility for continued maintenance of the elevator equipment, as required by the terms of the contract. These premaintenance repairs shall not include alteration, change, or addition to the equipment other than ordinary repair or replacement. (Note: See Description & Specifications of the Schedule for submittal requirements.)

The Description & Specifications section required that:

[e]ach offeror shall submit with his bid an itemized list of any premaintenance repairs he proposes to make, and his bid price for making each of the premaintenance repairs listed. (See Exhibit B for the suggested format for the list of premaintenance repairs.) Failure of the offeror to include any item requiring premaintenance repair on his list shall not relieve him of his responsibility to repair same under the terms of the contract. [Emphasis added.]

Cavinder was the low bidder and Mid-America was second low.

On May 22, Mid-America filed an "official protest" with the contracting officer. It noted that Cavinder bid "\$ 0" for the premaintenance repair line item and that its bid included no itemized list of premaintenance repairs to be completed. In Mid-America's opinion,

this rendered Cavinder's bid nonresponsive. The contracting officer responded to Mid-America's protest by letter of May 29, stated that Mid-America had protested "the receipt of bids" rather than "deficiencies in the solicitation" or "award of the contract." Since the contracting officer had not yet evaluated the bids for responsiveness and responsibility, she advised Mid-America that, when the contract would be awarded, it would be notified at that time of the successful bidder and could file a protest then, if necessary.

On June 9, the contracting officer requested that Cavinder verify its bid.<sup>1/</sup> Cavinder responded on June 17 that "the items needed [to repair the elevators] are included in our submitted price to you," and that its bid was correct. Taking this as proof that Cavinder would fix the deficiencies at no cost to the Postal Service, and finding Cavinder otherwise responsible, the contracting officer made award to Cavinder on June 24. Mid-America renewed its protest on July 2.<sup>2/</sup>

Mid-America notes that the solicitation clearly called for premaintenance repairs to be accomplished before the monthly maintenance service began, requiring a detailed listing and explanation of necessary repairs. It states that, because

<sup>1/</sup> The basis of this request was that repairs would be necessary to several elevators to restore them to the required level of operation. The contracting officer apparently intended the request for verification of Cavinder's bid to include an affirmation by Cavinder that it would accomplish whatever premaintenance repairs were necessary at no cost to the Postal Service.

<sup>2/</sup> The protest is timely, based on Mid-America's initial protest dated May 22. The contracting officer failed to take appropriate action upon receipt of this letter. Pursuant to Postal Contracting Manual 2-407.8 e., the contracting officer should have either determined that the protest was obviously meritorious, referred the protest to this office for resolution, or, with the concurrence of the Head of the Procuring Activity and the Regional Counsel, denied the protest as obviously without merit. The contracting officer's failure to take one of these courses of action undermines the timely and efficient resolution of bid protest issues. See PCM 2-407.8 d.

Cavinder provided neither a price nor a listing of repairs, Cavinder was nonresponsive and not eligible for award.

The contracting officer notes that the solicitation and regional elevator maintenance service procurement instructions<sup>1/</sup> do not require a bidder to provide either a cost for premaintenance repairs or a list of such repairs. By verifying its bid and undertaking to perform the premaintenance repairs at no cost, Cavinder has bound itself to perform whatever repairs are necessary without cost to the Postal Service. Therefore, Cavinder's bid was responsive and award was properly made to it as the low, responsive, responsible bidder.<sup>1/</sup>

Cavinder notes in its comments that three of the five bids on this solicitation bid no cost on the premaintenance repair line item and that it is currently performing the list of premaintenance repairs presented to it without cost to the Postal Service.

In supplemental comments, Mid-America states that the solicitation clearly called for a price for and list of premaintenance repairs. Mid-America states that Cavinder's bid contained neither of these, and was, therefore, nonresponsive. It asserts that the contracting officer's questions to Cavinder after bid opening illustrates the ambiguity of its bid, and that these post-bid opening negotiations were unfair to those bidder who responded properly to the solicitation's requirements.

The key question concerning responsiveness is whether the bid is "an offer to perform, without exception, the exact thing called for in the invitation." Siska Construction Company, Inc., P.S. Protest No. 85-73, December 31, 1985. The responsiveness of a bid must be determined on the basis of the bid submitted at bid opening. Afri-American Supply Company, P.S. Protest No. 81-33, August 6, 1981. A bidder may not be allowed to explain the meaning of its bid after bid opening when he is in a position to prejudice other bidder or to affect the responsiveness of its bid. Master Molding, Inc., P.S. Protest No. 83-67, January 10, 1984, and cases cited therein. Therefore, we must ignore any

<sup>3/</sup> The contracting officer refers to Regional Instruction No. 641, dated January 23, 1978, entitled Solicitation Format and Specification for Elevator Maintenance Service, which provides the solicitation and specification to be used, without change, in these types of procurements. The solicitation at issue here followed the format required by the Instruction

<sup>4/</sup> The contracting officer notes that Cavinder is presently performing such repairs at no cost.

representations made by Cavinder after bid opening and look only to the face of its bid.

As applied to the present case, the question is whether Cavinder's bid of no cost for premaintenance repairs takes exception to the requirements of the specification. We think that it does not. A no-cost bid of for certain portions of required work does not render a bid nonresponsive. See, e.g., Contract Business Services, Inc., P.S. Protest No. 84-61, September 5, 1984, citing National Mediation Board - Request for Advance Decision, Comp. Gen. Dec. B-209037, October 8, 1982, 82-2 CPD & 323. Cavinder bound itself in its bid to perform all required premaintenance repairs, and is, in fact, presently performing such repairs at no cost to the Postal Service. Cavinder's failure to provide a list of required premaintenance repairs does not render its bid nonresponsive in light of the clear solicitation requirement that the successful bidder would be bound to perform all necessary repairs regardless of whether they had been noted on the bidder's list. Cavinder's bid, therefore, was responsive and eligible for award.

The protest is denied.

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**[Compared to original 3/8/93 WJJ]**