



because the bid package did not indicate whether one would be required. Bascon refers to paragraph 31 of the General Provisions, which states, in part:

The Contractor shall, without additional expense to the Postal Service, be responsible for obtaining any necessary licenses and permits, and for complying with any applicable Federal, State, and municipal laws, codes, and regulations, in connection with the prosecution of the work.

Bascon also refers to the provision in subparagraph 52(a) that:

State and local building codes and regulations do not apply as a matter of law to work inside the property lines of Postal Service-owned properties but generally do apply to Postal Service-leased properties. In compliance with U.S. Postal Service policy the Contractor shall comply with all State and local building code requirements unless otherwise specifically provided.

Bascon asserts that the bid package fails to specify whether the property in question is owned or leased by the Postal Service or whether the contractor or the Postal Service is obligated to obtain the general building permit. Bascon proposes that the cost of any building permit be added to its bid price and the contract be awarded to it. This resolution, according to Bascon, will not prejudice the other bidders and will save \$62,000, the difference between Bascon's bid and the bid of Midwest.<sup>2/</sup>

Bascon has submitted an affidavit of the building commissioner for the unincorporated portion of Hamilton County, OH, where the Anderson Township post office will be located. The commissioner stated that under the applicable state code, a building permit is not required for the new post office. Bascon argues that because General Provision 31 makes the contractor responsible for obtaining necessary permits and the permit was not necessary on this project, its statement accompanying its bid that it did not include the cost of the general building permit does not qualify its bid; its statement was not inconsistent with the actual requirements of the solicitation.

The contracting officer's rejection of Bascon's bid as nonresponsive was correct. Paragraph 2-404.2(a) of the Postal Contracting Manual (PCM) states: "Any bid which fails to conform to the essential requirements of the invitation for bids shall be rejected." Subparagraph (d) provides: "Ordinarily a bid should be rejected when the bidder attempts to impose conditions which would modify requirements of the invitation for bids or limit his liability, since to allow the bidder to impose such conditions would be prejudicial to other bidders."

The bid form on which Bascon submitted its bid clearly stated that all work included in the solicitation would be performed for the amount shown as "TOTAL BID" on the form. It also cautioned bidders: "Bids should not be qualified by exceptions to bidding conditions."

<sup>2/</sup> Bascon presented no evidence as to the likely cost of a building permit.

The responsiveness of a bid is measured by whether it unequivocally offers to perform in total conformance with the IFB's terms and specifications for a fixed price. The controlling factor on a bid's responsiveness is not whether the bidder intends to be bound but whether his intention is apparent from the bid as submitted. Afri-American Supply Company, P.S. Protest No. 81-33, August 6, 1981, citing The Entwistle Company, Comp. Gen. Dec. B-192990, February 15, 1979, 79-1 CPD & 112.

In order to be deemed responsive, a bid must unequivocally offer to provide the requested items and meet the material specifications at a firm fixed-price. Thus, a bid that limits the firm's contractual obligations or does not offer to perform at a firm, fixed-price must be rejected. Any extraneous documents submitted with the bid, including a cover letter, must be considered a part of the bid for purposes of determining the bid's responsiveness. General Electric Company, 65 Comp. Gen. 377 (1986) 86-1 C.P.D., & 223.

Plant Systems, Inc., Comp. Gen. Dec. B-226898, May 14, 1987, 87-1 CPD & 517. Where a bid is ambiguous and any of its reasonable meanings would make it nonresponsive, it must be rejected. C.A. Adkins Construction Co., P.S. Protest No. 82-59, citing Lift Power, Inc., Comp. Gen. Dec. B-182604, January 10, 1975, 75-1 CPD & 13. Here, a reasonable interpretation of Bascon's bid is that its intention to be bound is conditioned on the lack of a requirement for a building permit. Another is that Bascon's bid is subject to increase depending on the cost of any required permit.<sup>17</sup> Either interpretation renders the bid nonresponsive. See Plant Systems, Inc., *supra*; Computer Terminal Sales, Comp. Gen. Dec. B-200366, January 22, 1981, 81-1 CPD & 37.

Where a bidder is confused about the requirements of a solicitation, it must resolve the confusion by written inquiry prior to submitting its bid and not ignore the warning against qualifying its bid. Universal Contracting, P.S. Protest No. 80-47, October 30, 1980; See Della Pello Contracting Co., Inc., and Dosch-King Company, P.S. Protest No. 80-68, November 21, 1980. Paragraph 1 of the Instructions to Bidders provides:

Explanations to Bidders. Any explanation desired by a bidder regarding the meaning or interpretation of the invitation for bids, drawings, specifications, etc., must be requested in writing and with sufficient time allowed for a reply to reach bidders before the submission of their bids.

Paragraph 2 of the Instructions to Bidders provides:

Conditions Affecting the Work. Bidders should visit the site and take such other steps as may be reasonably necessary to ascertain the nature and location of the work, and the general and local conditions

<sup>37</sup> As recited above, at the time of filing its protest, Bascon adopted this position.

which can affect the work or the cost thereof. Failure to do so will not relieve bidders from responsibility for estimating properly the difficulty or cost of successfully performing the work.

Bascon could have requested clarification of its question concerning the status of the site and other questions it considered relevant to its determination of the need for a building permit on the project. The solicitation imposes on bidders the obligation of determining whether any permits are required and the time required to obtain them. That Bascon now submits evidence that suggests a general building permit is not required is of no moment. Its failure to commit to supplying a permit, if required, deviates from the commitment required of bidders under this solicitation. Considering Bascon's bid would prejudice those bidders who properly included in their bid a contingency amount reflecting the risk that a permit would be required.

Bascon also argues that its "clarification" is a minor irregularity that can be easily corrected by determining the cost of the building permit, adding it to Bascon's bid and awarding the contract to Bascon and that acceptance of its bid will save the Postal Service \$62,000, the difference between Bascon's bid and that of the next lowest bidder, Midwest. It has long been established that ambiguity in a bid is not a minor irregularity and the contracting officer must reject such bids. Wabash Tape Corporation, P.S. Protest No. 75-26, July 7, 1975; Afri-American Supply Co., *supra*.

To allow Bascon to add the price of a permit after bid opening, if one were required, would prejudice all other bidders by giving Bascon, in effect, a chance to decide after all bids have been revealed on what basis it will accept the contract. If adding the price of the permit to Bascon's bid raised it above that of the second low, Bascon could decide not to seek the increase and take the contract at its bid price. Were the price of the permit less than the difference between the low and second low bids, Bascon could press to increase its price by the cost of the permit. Maintaining the integrity of the competitive bidding system precludes giving Bascon this second opportunity to consider its bid. See Southwood Builders, Inc., P.S. Protest No. 87-44, June 3, 1987, citing Government Contract Services, Inc.; Daly Construction, Inc., P.S. Protest No. 85-95, January 21, 1986. Any financial saving which an individual case might produce is insufficient justification for a different result. Degenhardt & Daly Construction Company; Mack Development Company, Inc., P.S. Protest No. 75-54, August 5, 1975.

The protest is denied.

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**[Compared to original 3/12/93 WJJ]**