

Protest of)	
)	Date: July 29, 1988
E-Z COPY, INC)	
)	
Solicitation Nos. 389990-88-A-0277,)	
-0278, -0284, -0286, -0288, -0289,)	
-0290, and -0292)	P.S. Protest No. 88-38

DECISION

E-Z Copy, Inc., protests the award of the above solicitations for coin-operated photocopying services to Pitney Bowes, Inc., contending that it has submitted the "lowest [sic, given that the bids were to be evaluated on the basis of the commission revenue to the Postal Service, we assume that the protester intended "highest"] responsive bids," and that the contracting officer must have erred in analyzing the bids or in rejecting E-Z Copy's bids for some improper reason. In this last regard, the protester makes note of its previous protest of similar awards by the same contracting office (E-Z Copy, Inc., P.S. Protest No. 88-28), in which it contends its bids were erroneously rejected as nonresponsive and materially unbalanced.

The solicitations were issued by the Columbus, OH, Procurement and Materiel Management Service Office on March 13, 1988, with an offer due date of April 14, 1988. Each sought offers for photocopy machines to be located at various facilities within a specific geographic area.^{1/} The solicitations provided for the offeror to specify the commission which it would pay per copy within a range of number of copies^{1/} and

^{1/}Thus, solicitation -0284, captioned "Corbin, KY, MSC," identified 14 postal facilities at which copiers were to be located.

^{2/}Thus, block 11 of Form 7481 provided as follows:

"I (the supplier agree to pay the following monthly commission to USPS for its part under the plan named in block 8 (based on the estimated number of copies in block 9.

_____	to _____	_____ %
_____	to _____	_____ %
_____	to _____	_____ %

(Emphasis in original.)

provided that bids would be evaluated by multiplying the commission offered by the vendor by the copy price (\$0.25) times a monthly average number of copies per copier, set by the solicitation as 1,000 copies per machine. (Attachments to the solicitations also provided individual estimates of monthly usage by location.^{1/})

E-Z Copy did not bid in accordance with the scheme contemplated by the solicitation as set out in footnote 2. Instead, it sought to bid at two different commission rates. Its bid offered a modification of the text of block 11 as follows:

11. I (the supplier) agree to pay the following monthly commission to USPS for its part under the plan named in block 8 (based on the estimated number of copies in block 9).

0 to 1000 ____% (If location exceeds 999 copies per month)

1000 to up ____%

0 to 999 ____% (If location does less than 1000 copies per month)

As to each solicitation, E-Z Copy bid 0 percent commission at each location for all copies over 1000, 0 percent commission for 0 to 999 copies for locations which "did" less than 1000 copies per month, and a high percentage, ranging from 92.5 percent to 100 percent, for the first 1000 copies at those locations exceeding 999 copies per month.

The contracting officer evaluated all bids based on the estimated number of copies for each individual location, found that Pitney Bowes offered the most advantageous bids, and awarded contracts to Pitney Bowes on June 20.^{1/} This protest followed.

^{3/}For example, the 14 locations within the Corbin, KY, MSC had the following averages

Albany, KY	450
Barbourville, KY	560
Corbin, KY	1800
Cumberland, KY	600
Harlan, KY	1200
Liberty, KY	400
London, KY	2200
Manchester, KY	600
Middlesboro, KY	912
Russell Springs, KY	500
Pineville, KY	500
Somerset, KY	2000
Williamsburg, KY	1600

^{4/}Thus, as to the Corbin, KY, solicitation, the contracting officer noted that five of the fourteen facilities had average monthly copies of 1,000 or more. He calculated E-Z Copy's total commission by multiplying the vend rate (\$.25) times the commission rate (95%) times 5 times 1000 (the maximum number of copies for which commission would be received at each location), arriving at a total commission for E-Z

As noted above, in part E-Z Copy protests the awards to Pitney Bowes in terms similar to those of its prior protest: that its bids did not take exception to any of the terms and conditions of the solicitations or the actual revenues to be received from the MSCs involved, that the solicitations do not contain express limitations on commission rates, and that a postal employee assured E-Z Copy that there were no such limitations. However, as we understand the contracting officer's statement, the circumstances of these awards were different from those in E-Z Copy's earlier protest. In no instance did the contracting officer reject E-Z Copy's bids; rather, he found each E-Z Copy bid less beneficial than Pitney Bowes. The issue before us, then, is whether that evaluation was correct or whether there was some other basis on which E-Z Copy's bids were ineligible for award.

The contracting officer was in error in evaluating the bids in the manner described in footnote 4. The evaluation scheme used was inconsistent with the terms of the solicitation, which made it clear that the evaluation was to be done on the basis of 1,000 copies per machine, not the greater or lesser figure arrived at by aggregating the location-by-location estimates set out in the solicitation attachment. There is no need, however, to try to correct the contracting officer's calculations because E-Z Copy's bids are both nonresponsive and ambiguous.

Postal Contracting Manual 2-404.7(a) and (d) require the rejection of bids "which fail to conform to the essential requirements of the invitation for bids" or when "the bidder attempts to impose conditions which would modify requirements of the invitation for bids or limit his liability." Here, E-Z Copy failed to comply with the requirement of the solicitation to bid a set price per copy within a specified range of number of copies, seeking instead to qualify its bids and limit its liability by tying its offered commission to a total number of copies.^{1/} As such, its bids were clearly nonresponsive and not for further consideration. See The Jewett-Cameron Lumber Corporation, Comp. Gen. Dec. B-227471, October 21, 1987, 87-2 BCA & 378; Harris Construction Company, Inc., Comp. Gen. Dec. B-218387, June 21, 1985, 85-1 CPD & 710.

Copy of \$1,187.50. The contracting officer calculated Pitney Bowes' commission rate (62.5% for all copies) by multiplying it time the total number of monthly copies set out in the solicitation attachment, 13,671, for a total evaluated commission of \$2,132.96. The bid of Dennis Copy (a 46% commission rate on all copies) was similarly evaluated on the basis of 13,671 copies.

^{5/}The effect of the limitation is seen when the Corbin, KY, offers are evaluated on the basis of 1,000 copies as the solicitation contemplates. Presumably, as to any such computation, E-Z Copy's bid must be viewed as offering the full 95% commission as to each facility (because 1,000 copies per facility are assumed). As so calculated, E-Z Copy's commission would be \$3,225, even though, given the significant number of facilities unlikely to reach 1,000 copies per month, the Postal Service's actual revenue would be far less.

Further, E-Z Copy's bids were ambiguous. While the contracting officer evidently understood E-Z Copy to be proposing differing rates depending on the estimated quantities set out in the solicitation, as set out above, its offer does not compel such a reading. Another reading would condition the commission to be paid depending on the actual experience site-by-site during the course of contract performance. The bidder's parenthetical qualifications ("If location exceeds ..." and "If location does less than ...") could reasonably be understood as conditioning any month's commission on actual performance. Even absent the obvious difficulties of responsiveness identified above, this element of ambiguity precludes consideration of E-Z Copy's bids. See Jerry Ganz, Inc., P.S. Protest No. 86-73, December 12, 1986; Strapex Corporation, P.S. Protest No. 84-10, May 23, 1984.

The protest is denied.

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[checked against original JLS 2/25/93]