

BEFORE THE
MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeal of COMPUTER SERVICES)
OF AMERICA) Docket No. MSBCA 1465
Under DBFP Proposal)
DBFP 90-3)

October 6, 1989

Responsiveness - Where the bidder failed to include the base price of the product offered in its bid in the space provided and such price was not otherwise ascertainable from the bid documents as submitted, the bid was nonresponsive.

APPEARANCE FOR APPELLANT: None

APPEARANCE FOR RESPONDENT Gail R. Cohn
Assistant Attorney General
Baltimore, MD

OPINION BY CHAIRMAN HARRISON

Appellant appeals the final determination by the Department of Budget and Fiscal Planning (DBFP) that its bid was non-responsive.

Findings of Fact

1. In early 1989, DBFP determined that the efficiency of the State's information processing program could be increased and the costs reduced by purchasing selected computer products on a Statewide, as opposed to an agency, basis. Accordingly, it proposed to solicit bids for microcomputer hardware and software products and to develop various Statewide Basic Ordering Agreements, with the intention of contracting annually with one or more vendors to centralize purchasing. Under this system, State agencies, with DBFP approval, will submit individual purchase orders for required products directly to the vendors.

The Request for Quotation (RFP) soliciting bids from microcomputer vendors was advertised in the Maryland Register on June 16, 1989 and issued to approximately 150 firms who were either known to DBFP or who had expressed interest in receiving the solicitation.

2. The RFQ contemplated that DBFP would enter into Statewide Basic Ordering Agreements with one or more vendors for specified microcomputer hardware and software products for a one year term. Vendors choosing to bid on these contracts were required to use the bid sheets attached to the RFQ. Bid sheets were provided for each of the five product classifications included under the RFQ.

3. The instant protest and appeal involves Appellant's bid on one of the five product classifications, the generic classification, which (unlike the other classifications) specified no particular manufacturer but instead specified minimum requirements the offered products would have to meet. Therefore, under this generic classification (Part 2-2 of the RFQ) the vendor could offer any product it chose so long as the product met the minimum specifications.

4. Part 2-2 was sub-divided into five different specification levels, (each a different model), and the RFQ included bid sheets to correspond to each level. Each bid sheet set out minimum specifications, asked the bidder to specify a make and model it would offer to meet those specifications, and asked for the list price,¹ the percentage of discount, and the installed and delivered prices for purchases of one to three units and for purchases of four or more units. The bid sheets also specified certain optional equipment and features and as shown below required the same pricing data for each option as required for the basic unit.

5. The RFP provided that vendors would be selected on the basis of the most favorable evaluated bid price (the product of a weight factor as a multiplier and the bid price) for each generic microcomputer hardware item or product family designated on the bid sheets.

¹List price was defined in the RFQ as the manufacturer's list price.

6. The instruction sheet for preparation of bid sheets for Part 2-2 advised that:

All prices for all items on the bid sheet for a Generic model must be bid in order for the bid to be considered responsive.

7. Appellant's bid sheets for Part 2-2 as submitted with its bid were all filled out generally in the manner shown in its bid for the CompuAdd 286/12 as follows: (Go to next page.)

COMPUDEC
OF AMERICA
Vendor's Name

PART 2-2

Page 1 of 1

BID SHEET
Level 2 - 80286
GENERIC - No Manufacturer Specified

REVISED

MINIMUM SPECIFICATIONS

80286 Processor
10 Mz. clock speed
640K Ram,
Expansion capability to 2 MB on the motherboard
20 MB, 40 ms. Hard Disk
1 parallel port, 1 serial port
1 1.2 MB 5-1/4" floppy disk drive
AT Enhanced Style 101 Key Keyboard
Support for 80287 Math Coprocessor Chip
3 Half height Drive Bays, with 2 accessible
150 Watt Power supply
Unoccupied Slots: 3 required
Current MS DOS operating System
AT Type Bus

Must be capable of running IBM PC/AT compatible software applications.

	List Price	% Discount	Del. Unit Price	1-3 Units		4+ Units	
				Inst. Unit Price	Del. Unit Price	Inst. Unit Price	W/F
<u>COMPUDEC 286/12</u> Make & Model (Attach Specification Sheet)		10+ Units					3
<u>Display Options</u> (Includes Monitor, Cables & Video Adaptors if necessary)							
Hercules Compatible Monographics	2250	-2%	+2%	2200	+2%	2250	2
EGA	2650			2650		2650	2
VGA	2780			2780		2780	1
<u>Options</u>							
2nd 5-1/4" F. D. 360K	110	110		110		110	1
2nd 5-1/4" F. D. 1.2MB	120	120		120		120	1
2nd Drive - 3-1/2" 1.44 MB	109	109		109		109	1
Add 80287 Math Coprocessor	+290	+290		+290		+290	1
Add memory to 2MB extended	+30	+30		+30		+30	1
LIM 4.0 EMS drivers for extended memory	+30			30			1
<u>Substitution Options (Net Increase)</u>							
Substitute 40MB 40ms Hard Disk			+200	+200		+200	2
Substitute 60MB 28ms Hard Disk			+300	+300		+300	1

As may be observed, Appellant's bid for Part 2-2 fails to include an amount in the space provided for the list or base price² of the basic unit of the make or model it proposed, failed to include an amount for installed and delivered prices for purchases of one to three units and for purchase of four or more units, and failed to set forth a percentage of discount. However, Appellant's bid does include amounts and percentages filled in the blanks for these items for the options.

8. Appellant was notified by letter dated July 28, 1989 that its bid was disqualified because all the required pricing information on the bid sheets was not provided.

9. Appellant asked for reconsideration of this determination (i.e. protested) by letter dated July 30, 1989 inferring that its prices for the display options included the base or list prices of the make and model proposed.³

10. By letter dated August 3, 1989, DBFP issued a final decision providing in relevant part as follows:

Your bid was disqualified for the following reasons:

1. The Make and Model prices for the minimum specification microcomputers are not included on the Bid Sheets. The absence of these prices makes it impossible to calculate the evaluated bid price with the appropriate weight factors.
- 2 As explained in the instructions for Part 2-2, "All prices for all items on the bid sheet for a Generic Model must be bid in order for the bid to be considered responsive".

For these reasons, your bid is non-responsive and cannot be considered.

12. Appellant appealed to this Board on August 10, 1989. Appellant did not comment on the Agency Report and neither party requested a hearing.

² Appellant also included descriptive literature with its bid for the particular products it offered under Part 2-2 which included some price information, but it is not possible to ascertain the manufacturer's list price from these documents.

³ We assume Appellant intended that the cheaper prices listed on its bid in the blanks for the "Options" (as distinct from the prices listed for the "Display Options") were the prices of only the options themselves.

Decision

Appellant's bid was disqualified by DBFP on grounds that it was non-responsive.

The term responsive is defined in COMAR to mean "a bid submitted in response to an invitation for bids that conforms in all material respects to the requirements contained in the invitation for bids." COMAR 21.01.02.01 (78).

To be responsive, a bid cannot deviate from a material term of the solicitation. Price is a material term of a solicitation⁴ and the determination of what the intended bid price is must be made from the face of the bid documents themselves and not from information subsequently obtained from the bidder. See Inner Harbor Paper Supply Company, MSBCA 1064, 1 MSBCA ¶24 (1982); Calvert General Contractors Corp., MSBCA 1314, 2 MSBCA ¶140 (1986). Appellant's bid was thus properly determined to be non-responsive with respect to the basic units offered for failure to include a price for such units and an amount for installation and delivered prices for purchases of varying quantities of the basic equipment and failure to include any percentage of discount offered.

However, Appellant asserts in its protest and appeal that its base or list price for the basic model offered without options was included in the prices listed for the various display options and therefore at least as to the display and other options it argues that its bid is responsive because its prices for the display options and other options may be interpolated. However, it is impossible to ascertain from the prices listed for the various display options in Appellant's bid what portion of the price quoted represents the price of the

⁴A material deviation from a solicitations's requirements occurs when the price, quantity, quality or delivery of the goods is affected. Excelsior Truck Leasing Company, Inc., MSBCA 1102, 1 MSBCA ¶50 (1983); Quaker-Cuisine Services, MSBCA 1083, 1 MSBCA ¶23 (1982). See COMAR 21.06.02.04.

basic model offered and what amount represents the price of the display option. Therefore, it is not possible to quantify from the face of the bid documents what Appellant's bid for either the basic units or the basic units with the display options and other options was intended to be and the bid is thus non-responsive.

The fact that descriptive literature was included with Appellant's bid which sets forth certain price information for various models does not clarify the matter since it cannot be determined from the manufacturers' literature what the list or base prices are. Even if it could be determined from the literature submitted with the bid what the list or base price of the particular model offered was, Appellant's intended bid for the options themselves is still subject to guess work (and thus non-responsive) because it cannot be determined from the bid itself that Appellant intended the cost of the option to be the difference between the amount appearing in the appropriate blank on the bid sheet and the list or base price of the item appearing in the descriptive literature. See The National Elevator Company, MSBCA 1291, 2 MSBCA ¶135 (1986).

For the foregoing reasons, the appeal is denied.

