

M. JORDAN



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Doug Jones Sawmill

File: B-239996

Date: September 19, 1990

J. Richard Livingston, Esq., Golden, Mumby, Summers & Livingston, for the protester.
Rhea Daniels Moore, Esq., Department of Agriculture, for the agency.
Paul E. Jordan, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's timber sale bid, which omitted bid for one type of timber, was properly rejected as nonresponsive, since bid did not obligate protester to purchase omitted timber.

DECISION

Doug Jones Sawmill (DJS) protests the rejection of its bid as nonresponsive and the award of a contract to Colorado Wood Corporation (CWC), for the Big Buck Timber Sale, conducted by the Forest Service, Department of Agriculture. DJS contends that its omission of a bid for dead timber was a mistake and that the Forest Service should have accepted its bid.

We deny the protest.

The prospectus for the sale called for sealed bids to purchase estimated quantities of "ponderosa pine and other" sawlogs as well as "dead" timber. Minimum acceptable bids were set forth for both timber types and bidders were required to enter bid prices for all material subject to bidding. The minimum bid for "ponderosa pine and other" timber was \$5.19 per thousand board feet (MBF) at an estimated quantity of 1,038 MBF. "Dead" timber was set at a minimum bid of \$0.50 per MBF at an estimated quantity of 212 MBF.

When bids were opened on June 1, 1990, DJS's bid of \$17 per MBF for ponderosa pine and other timber was the high bid.

049521 / H2287

Since DJS left blank the bid line for dead timber, its bid was rejected as nonresponsive and posted with the other bids. Award was made to CWC, as the second-high bidder, and DJS filed a protest with our Office.

DJS claims that it intended to bid the minimum acceptable price for dead timber and, thus, should have received the award. We disagree. To be responsive, a bid must constitute an unequivocal offer to perform the exact thing called for in the solicitation such that acceptance of the bid will bind the contractor in accordance with the material terms and conditions of the solicitation. Custom Environmental Serv., Inc., B-234774, May 24, 1989, 89-1 CPD ¶ 501. The failure to include a price for an item requested by the solicitation evidences a bidder's intent not to be bound or obligated to perform the item. Thus, as a general rule, a bid must be rejected as nonresponsive if the bid, as submitted, does not include a price for every item requested by the solicitation. Spectrum Leasing Corp., B-216615, Feb. 19, 1985, 85-1 CPD ¶ 211. Since responsiveness is determined at the time of bid opening, a nonresponsive bid generally may not be corrected after bid opening so as to make it responsive. HH&K Builders, B-232140, Oct. 20, 1988, 88-2 CPD ¶ 379; HH&K Builders--Recon., B-232140.2, Nov. 30, 1988, 88-2 CPD ¶ 537.

A bidder may be permitted to correct an omitted price where the bid, as submitted, indicates the possibility of error, the exact nature of the error, and the intended bid price. Handyman Exchange, Inc., B-224188, Jan. 7, 1987, 87-1 CPD ¶ 23. This limited exception is based upon the premise that where there is a consistent pattern of pricing, in the bid itself, that establishes both the error and the intended price to hold that bid nonresponsive would be to convert an obvious clerical error of omission to a matter of responsiveness. MTC Indus. & Research Carmiel, Ltd., B-227163, Aug. 18, 1987, 87-2 CPD ¶ 174. Here, since the dead timber item is repeated nowhere else in the bid schedule and there is no other closely related item, there is no basis upon which we can conclude that a pattern has been established in the protester's bid so we can determine from the bid itself the price DJS would have inserted. See HH&K Builders, B-232140, supra. Since the protester's post-bid opening explanation of its intent cannot be considered, the alleged error here may not be corrected. Having failed to bid on the dead timber, DJS failed to obligate itself to purchase and remove that timber. Thus, the agency reasonably determined the bid to be nonresponsive.

A contracting agency also may waive the failure to bid on an item if the item for which no price was submitted is divisible from the solicitation's requirements, is de minimis as to total cost, and clearly would not affect the competitive standing of the bidders. HH&K Builders, B-232140, supra. The record does not establish that the dead timber item is divisible from the requirements. The timber sale objective was to rapidly harvest the timber to prevent the further spread of beetles and envisioned the removal of all timber--living, dead, and timber of less than merchantable size. In view of the disparity in minimum bid prices and quantities of timber--\$0.50 per MBF from 212 MBF of dead timber and \$5.19 per MBF for 1,038 MBF of ponderosa pine--it is unlikely that it would be economically or logistically feasible to divide the work based on the type of timber to be harvested. Further, the protester has not argued that the work would be so divisible. Thus, a waiver of the omitted price would be inappropriate.

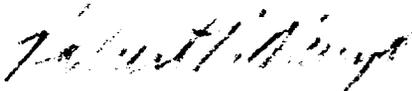
This case is distinguishable from our decisions in Buildings By Thrift, Inc., B-215036, June 28, 1984, 84-1 CPD ¶ 691; W-I Forest Prods., Inc., B-204168.2, Feb. 17, 1982, 82-1 CPD ¶ 138, where a de minimis difference in the minimum acceptable price and the lower amounts actually bid did not make the bids nonresponsive. In those cases, the protesters had provided bids albeit for less than the minimum price, for all items. DJS failed to indicate an unequivocal promise to perform all items, while the bidders in the above-referenced cases clearly obligated themselves to purchase and harvest all the timber encompassed by the sale.

DJS also contends that the agency's posting of its non-responsive bid was inappropriate in view of a claimed Forest Service handbook provision requiring a nonresponsive bid be returned to the bidder. DJS argues that by posting its bid, the agency accepted it with an implied price (the required minimum) for the dead timber. These contentions are without merit.

From our review of the Forest Service handbook provision on which DJS relies, we find nothing that requires return of nonresponsive bids or any prohibition against posting such bids. In fact, the handbook provides that a bid is to be posted even where a bidder alleges a mistake was made, and the prospectus bidding instructions provide that sealed bids will be publicly opened and posted. This is consistent with the rule governing sealed-bid procurements contained in Federal Acquisition Regulation § 14.402-1 (FAC 84-53) (bids to be opened publicly, read aloud to those present, recorded, and made available for inspection by interested persons if it does not interfere unduly with the conduct of

government business). Moreover, an agency's internal instructions, such as the Forest Service handbook, do not have the force and effect of law, so that the alleged failure to comply with them in a particular instance involves a matter for consideration within the agency itself, rather than through the bid protest process. East West Research, Inc., B-238316, Apr. 18, 1990, 90-1 CPD ¶ 400. Finally, the protester cites no authority, and we are aware of none, which supports its argument that the posting of a bid has an effect on its responsiveness.

Accordingly, the protest is denied.



James F. Hinchman
General Counsel

