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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: New Shawmut Timber Company

File: B-286881

Date: February 26, 2001

Alan I. Saltman, Esq., Saltman & Stevens, for the protester.
Gwen M. Ralph, Esq., for Highland Forest Resources, Inc., an intervenor.
Lori Polin Jones, Esq., Department of Agriculture, for the agency.
Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Forest Service properly rejected bid for timber sale as nonresponsive where protester failed to include a price for one of the several line items being sold; in the absence of a price for the item, the agency reasonably concluded that there was doubt regarding whether the protester had offered to perform that aspect of the requirement.

DECISION

New Shawmut Timber Company protests the rejection of its bid as nonresponsive for the FR165 Re-Entry timber sale in the Allegheny National Forest, conducted by the Forest Service, Department of Agriculture. New Shawmut contends that its omission of a price for one of the line items did not provide a proper basis for rejecting its bid.

We deny the protest.

The prospectus for the sale called for the submission of sealed bids to purchase seven species of timber and included an estimated quantity and minimum acceptable price for each species. As pertinent here, one of the seven species was listed as “hardwood–other,” with a minimum acceptable bid price of \$1.90 per hundred cubic feet.

The agency received five bids; New Shawmut’s was the apparent high bid but, after reviewing it, the agency determined that the bid was nonresponsive, and rejected it, because it did not include a price for the “hardwood–other” line item.

New Shawmut maintains that the agency's rejection of its bid was improper because, in effect, it bid zero for the "hardwood--other" line item. According to New Shawmut, although this price was below the stated minimum, its bid nonetheless was responsive. The protester directs our attention to several prior decisions of our Office where we found that the Forest Service had improperly rejected a bid as nonresponsive where a line item price was below the minimum acceptable price by only a negligible amount. E.g., Buildings By Thrift, Inc., B-215036, June 28, 1984, 84-1 CPD ¶ 691.

New Shawmut's argument mischaracterizes the issue here. To be responsive, a bid must constitute an unequivocal offer to perform the exact thing called for under the solicitation, such that acceptance of the bid will bind the contractor to perform in accordance with the material terms of the solicitation. Doug Jones Sawmill, B-239996, Sept. 19, 1990, 90-2 CPD ¶ 233 at 2. The failure to include a price for a line item evidences a bidder's intent not to be bound or obligated to perform that element of the requirement, and thus generally renders the bid nonresponsive. Id.

New Shawmut's failure to price the "hardwood--other" line item was not equivalent to a bid of zero for the item; rather, leaving its bid for that item blank rendered the bid equivocal regarding whether New Shawmut intended to obligate itself to perform that element of the requirement. The bid therefore properly was rejected as nonresponsive for this reason.¹ In contrast, in the cases cited by the protester, since the bids included prices for all line items, the bidders--unlike New Shawmut--obligated themselves to perform the requirements of the line items. This left as the only issue the question whether the bid price was materially below the stated minimum; it was this issue that our decisions addressed.

¹The protester characterizes the line item in question as de minimis because the price for that item (at the stated minimum) is small in relation to the entire bid--approximately \$1,438 out of a total bid of approximately \$4.3 million. However, this ignores the fact that, despite its relatively low value in relation to the entire sale, this line item was the second largest, representing 757 hundred cubic feet, or approximately 22 percent of all timber required to be harvested. Under these circumstances, the price omission was not de minimis. See MIBO Constr., Co., B-224744, Dec. 17, 1986, 86-2 CPD ¶ 678 at 2 (even where the price impact of a requirement is trivial, where it affects the quality of performance in more than a negligible way, the requirement is material).

New Shawmut maintains that its bid falls into an exception under which a bidder may be permitted to correct a mistake where a bid on its face reflects a consistent pattern of pricing that both establishes the nature of the error and the intended bid. Doug Jones Sawmill, *supra*. New Shawmut contends that its bid evidences a consistent pattern of pricing because, for five of the six remaining line items, it rounded its price upward to the nearest dollar above the minimum acceptable bid price; thus, the protester concludes, since the “hardwood–other” line item had a minimum acceptable price of \$1.90 per hundred cubic feet, its “mistake” of leaving it blank should be corrected to a price of \$2 per hundred cubic feet. We disagree. First, there is nothing on the face of the bid that shows New Shawmut’s failure to price the line item was a mistake rather than a business judgment. In any case, there was no clear pattern of pricing, since, as noted, New Shawmut did not round its price upward to the nearest dollar above the minimum acceptable bid price for all of the other line items. For the “black cherry” line item, the minimum acceptable price was \$1,717.51 per hundred cubic feet, and New Shawmut bid \$2,384. There thus is no consistent pricing that can serve as a basis for inferring the price New Shawmut might have intended to bid for the “hardwood–other” line item.

Finally, New Shawmut maintains that its bid was responsive because it evidenced its intention to be bound by all terms of the solicitation elsewhere in its bid documents. Specifically, the protester notes that the bid form (the terms of which it acknowledged by signing its bid) provides that the bidder agrees to cut and remove all the “included timber or forest product” by the date specified. (The protester also references a provision of the sample contract that was included with its bid materials.) This argument, too, is without merit. Even if the provisions referenced by the protester indicated its willingness to perform in accordance with the contract terms generally, its failure to price the “hardwood–other” line item rendered the bid at best ambiguous as to New Shawmut’s intent regarding that item; there is no way to determine from the bid whether the failure to price the line item or the commitment made elsewhere in the bid reflects New Shawmut’s intent. Where, as here, a bid is susceptible of more than one reasonable interpretation, under one of which it would be nonresponsive, it must be rejected. J. Calderera & Co., Inc., B-276201, May 21, 1997, 97-1 CPD ¶ 192 at 2.

The protest is denied.

Anthony H. Gamboa
Acting General Counsel