

DECISION

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THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548
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FILE: B-195087

DATE: August 28, 1979

MATTER OF: D&J Maintenance Co., Inc.

DIGEST:

Where bidder unequivocally offers to perform contract at definite price which can be determined from face of bid, bid is responsive notwithstanding fact price is stated in terms of percent of solicitation's specified manufacturer's list prices rather than dollar amount.

D&J Maintenance Co., Inc. (D&J) protests award of a contract by the Department of the Navy to Henderson's Sales & Service (Henderson), the apparent low bidder under invitation for bids (IFB) No. N62472-79-B-3764. As its basis for protest, D&J contends that Henderson's bid was nonresponsive.

The solicitation was for the maintenance of swimming pools at the Naval Weapons Station Earle, Colts Neck, New Jersey, for the term from June 5, 1979, to June 5, 1980. Notice of Award to Henderson was issued July 12, 1979.

The protester's contention of nonresponsiveness is based on the fact that Henderson entered a percentage figure in the total price column for sub-item 2b of the Schedule of Prices (Paragraph 3 of Section 00004 of the IFB), rather than a dollar amount. However, it is the Navy's position that Henderson's entry of "80% list" does not make the bid nonresponsive. It contends that in view of the evaluation formula in sub-item 2b and Henderson's method of computing the cost to the Government for replacement parts, it is clear that the total price is \$80. The Navy reports further that this price was confirmed by Henderson upon request for verification.

The issues here are whether Henderson's bid is responsive to a material requirement of the IFB and whether it is capable of being evaluated on an equal basis with other bids. This concerns whether Henderson unequivocally has offered to perform the work at a definite price in total conformance with the terms and specifications of the IFB. Shamrock Five Construction Company, B-191749, August 16, 1978, 78-2 CPD 123; Lift Power Inc., B-182604, January 10, 1975, 75-1 CPD 13. We believe that through operation

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[Protest ALLEGATION THAT Awardee Is NONRESPONSIVE]

of the evaluation formula specified by IFB sub-item 2b a definite cost to the Government for any replacement parts is determinable from the face of Henderson's bid. Compare Worldwide Services, Inc., B-187600, January 6, 1977, 77-1 CPD 12. Thus, we also believe that there is only one meaning to be inferred from Henderson's bid -- the bidder clearly intended to be bound to perform at a cost to the Government of \$80 for each \$100 of manufacturer's list price. See Action Manufacturing Company, MBAssociates--Reconsideration, B-186195, November 17, 1976, 76-2 CPD 424; Publication Press, Inc., B-186461, August 26, 1976, 76-2 CPD 190; 41 Comp. Gen. 721 (1962).

For example, sub-item 2b reads as follows:

<u>Item No.</u>	<u>Description of Service</u>	<u>Price for one month performance and/or Supply</u>	<u>Total Price</u>
2	<p>* * *</p> <p>b. Replacement Parts (all authorized replacement of parts and equipment furnished. The cost to the Government shall be the manufacturer's list price less the percent (%) discount. Evaluation of this item shall be based on \$100 of invoiced materials.)</p>		

$$\$100 - (\$100 \times \% \text{ Discount}) = \$ \underline{\hspace{2cm}}$$

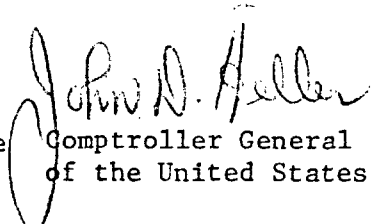
Henderson inserted "20%" above the word "Discount" in the formula on its bid, "80%" above the Dollar line, and "List" below that line, resulting in the following:

$$\begin{array}{c} 20\% \\ \$100 - (\$100 \times \% \text{ Discount}) = \$ \frac{80\%}{\text{List}} \end{array}$$

Based upon \$100 manufacturer's list price, the offered discount of 20% results in a definite cost to the Government of \$80 for each \$100 manufacturer's list price of replacement parts, or, as inserted by Henderson, 80% of list. We believe that Henderson conformed with the material requirement to state a definite price for the sub-item, permitting the Navy to evaluate the bid on an equal basis with that of the protester. The post bid opening verification of Henderson's bid, while unnecessary, did not prejudice D&J, since Henderson's bid was subject to only one reasonable interpretation.

Under these circumstances, the entry of "80% List," instead of \$80 in the "Total Price" column for sub-item 2b did not make Henderson's bid nonresponsive.

The protest is denied.


For The Comptroller General
of the United States