



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Record Press, Inc.

File: B-229570.2

Date: February 17, 1988

DIGEST

Where invitation for bids for printing services required delivery of typeset copy by 4 p.m., bidder's handwritten notation on bid that overtime period, to which premium charge in addition to basic prices applied, commenced at 3:30 p.m. made its bid nonresponsive because bidder's price could not be firmly established.

DECISION

Record Press, Inc. protests the award of a contract to Alpert Press under invitation for bids (IFB) Program No. 1272-S, issued by the Government Printing Office for the printing of appellate briefs for the Department of Justice and the United States Attorney's Office for the Southern District of New York. Record Press claims the agency improperly rejected its low bid as nonresponsive.

We deny the protest.

The IFB required the contractor to pickup manuscript copy at 7:30 a.m. and deliver typeset copy by 4 p.m. that same day. Bidders were to list line item prices for basic per page typesetting services, prices for complete production and distribution of briefs and the price, stated as a percentage, for premium work when authorized by the agency. Premium payments applied to orders requiring production on weekends, holidays and "daily overtime periods." Award was to be made to the lowest priced bidder as determined by multiplying the unit prices by the estimated quantities for each item; the bidders' proposed premium charges were not to be evaluated. Record Press filled in 150 percent as its premium charge. Directly beneath that line, however, it wrote in "Daily Overtime Period: 3:30 p.m. to 7:30 a.m. (16 hours)."

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The contracting officer rejected the protester's bid as nonresponsive primarily because he determined that Record Press, by inserting the overtime statement, had qualified its bid by not offering a firm, fixed price for the 4 p.m. normal scheduled delivery requirement, since overtime commenced at 3:30 p.m.

Record Press states that since the IFB required delivery "by" 4 p.m., it could perform by delivering prior to that time at 3:30 p.m. It argues that the notation in its bid merely evidences its intent to complete normal deliveries by 3:30 p.m. and thus does not constitute a qualification of its bid for the basic services.

The agency responds that although Record Press could perform by delivering prior to 4 p.m., it would be within the protester's discretion to choose to deliver either by 3:30 p.m. or wait and deliver by 4 p.m. and under the terms of its bid be entitled to premium payment for the half hour of overtime. The agency argues that the protester's bid prices are therefore not firm and fixed because they are subject to variation or modification by the unilateral action of Record Press.

Record Press responds that since the IFB requires agency approval of all premium payments, it could not unilaterally increase its price. Therefore, it believes the only logical interpretation of its notation is that it reflects simply a clarification that 7:30 a.m. to 3:30 p.m. is Record Press' standard 8-hour day, and that normal deliveries would be made within that timeframe. Furthermore, the protester states that when it called the contracting office to specifically ask for clarification of the term "daily overtime periods" it was told that the normal work day was 8 hours. Record Press states that it relied on this conversation in deciding to designate its daily overtime period in the bid.

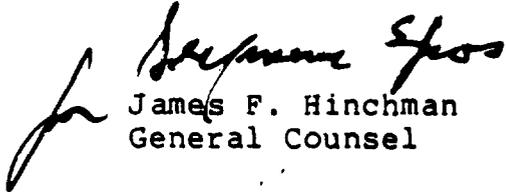
To be responsive, a bid must constitute an unequivocal offer to provide without exception exactly what is required at a firm, fixed price. Sess Construction Co., 64 Comp. Gen. 355 (1985), 85-1 CPD ¶ 319. Moreover, a bidder's intention to be bound by the solicitation requirements must be determined from the bid itself at the time of bid opening. HBH, Inc., B-225126, Feb. 26, 1987, 87-1 CPD ¶ 222.

We believe that Record Press' bid is, at best, ambiguous as to whether premium charges would be incurred for normal deliveries. The notation does not contain any language that indicates that all deliveries would be completed by 3:30 p.m. and that therefore delivery "by" 4 p.m. was

included in its basic prices. Although the IFB requires agency approval of premium payments, contrary to the protester's argument, we do not think this necessarily leads to the conclusion that its basic prices, without overtime premium charges, applied to all deliveries by 4 p.m., including those made after 3:30 p.m. Rather, in our view, under the terms of its bid the protester's prices were variable to the extent it decided to make deliveries before or after 3:30 p.m. Since its bid was unclear as to when premium charges would apply to its basic prices, the protester's total intended price could not be firmly established. As a result, its bid was not an unequivocal offer to perform in compliance with the IFB requirements at a firm, fixed price and was properly rejected as nonresponsive. HBH, Inc., B-225126, supra. With regard to the protester's assertion that it based its decision to include the notation on its conversation with the contracting office, we point out that the IFB did not request the additional information and, moreover, where, as here, bidders rely upon oral advice to alter the written terms of a solicitation, they do so at their own risk. Douglas M. Andrews, B-218687, May 17, 1985, 85-1 CPD ¶ 571.

The agency also argues that the protester's bid was nonresponsive because the typefaces specified in its bid were not equivalent to the typefaces required by the IFB. Since we have already concluded that the protester's bid was nonresponsive due to its notation on the bid form, we need not address this issue.

The protest is denied.


James F. Hinchman
General Counsel