



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Wasteco Container Services, Inc.

File: B-240309

Date: November 7, 1990

David B. Kitchens, Esq., Kitchens, Kelley, Gaynes, Huprich & Shmerling, for the protester.
Michael K. Slattery, Esq., for Georiga Waste Systems - South, an interested party.
Herbert F. Kelley, Jr., Esq., Office of the Judge Advocate General, Department of the Army, for the agency.
James M. Cunningham, Esq., and John F. Mitchell, Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Bid for refuse collection and disposal is ambiguous as to intended price, and therefore was properly rejected as nonresponsive, where bid contained notation that prices for base period of required services were "based on dumping fees of \$26 per ton."

DECISION

Wasteco Container Services, Inc. protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. DAKF11-90-B-0010, issued by the Department of the Army, Fort McPherson, Georgia, for refuse collection and disposal services. The Army considered Wasteco's bid to be ambiguous because of a notation the company inserted in its bid.

We deny the protest.

The IFB called for a firm, fixed-price contract to be awarded to the lowest aggregate price bidder for providing the services for a 1-year base period with up to four, 1-year option periods at Fort McPherson and two other locations. When bids were opened for the work on June 12, 1990, the contracting officer noted that Wasteco's low bid contained the following notation in its bid for the base period: "These prices are based on dumping fees of \$26 per ton."

Wasteco immediately explained (as later confirmed in writing to the contracting officer) that the statement was only to

049971 / 142618

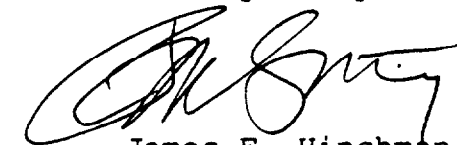
inform the contracting officer of the "basis . . . used to quote prices" and that the statement was not meant to be a "condition, stipulation, or contingency to the prices quoted."

Notwithstanding Wasteco's explanation, the contracting officer subsequently rejected the company's bid because she considered the notation to have rendered the company's bid for the first year's services to be ambiguous as to whether the company was reserving the right to increase its bid should the dumping fee exceed \$26 per ton.

Where a bid is subject to two reasonable interpretations, under one of which it would be responsive and under the other nonresponsive, the bid must be rejected as ambiguous. See B.J. Graphics, Inc., B-238194, May 1, 1990, 90-1 CPD ¶ 437. A bidder must therefore evidence an unequivocal intent to provide the requested items or services in total conformance with the terms and specifications of the invitation for bids at a fixed-price--a bidding intent which can be determined only from the bid itself. Medi-Car of Alachua County, B-205634, May 7, 1982, 82-1 CPD ¶ 439. Where a bidder stated that its bid was "based on brick price of \$90 per thousand" and argued, after bid opening, that the intent of this statement was only to advise the contracting agency that the bidder was "following specifications" but not to alter the price of its low bid, we still considered the bid to be ambiguous as to the intended price and, therefore, nonresponsive. Harco Inc., B-189045, Aug. 24, 1977, 77-2 CPD ¶ 144. See also M. A. Barr, Inc., B-189142, Aug. 3, 1977, 77-2 CPD ¶ 77 where we upheld the rejection of a low bid which contained the notation "Brick allowance \$135/1000 using standard block," notwithstanding the bidder's argument that the notation "merely advised the contracting agency that [its] allowance for brick meeting the specifications . . . is \$135 per thousand."

Clearly, the notation in Wasteco's bid is essentially the same as the bidders' notations in Harco and M. A. Barr; moreover, Wasteco essentially repeats the argument made by the bidders in those decisions that the notations were only intended to be advisory rather than conditional. Since we have previously rejected this argument, we conclude that Westeco's notation rendered the company's bid ambiguous as to the company's price for the base period.

We deny the protest.


James F. Hinchman
General Counsel