

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
CONTRACT APPEALS BOARD

PROTEST OF:

MONT “T” QUE INC. )  
 ) CAB No. P-0725  
Under IFB No. POKT-2005-B-0082-CM )

For the Protester: Ms. Renee Wallace, President, Mont “T” Que Inc., *pro se*. For the District of Columbia Government: Howard Schwartz, Esq., Senior Assistant Attorney General, Talia S. Cohen, Esq., Assistant Attorney General.

Opinion by Chief Administrative Judge Jonathan D. Zischkau, with Administrative Judge Warren J. Nash, concurring.

**OPINION DENYING PROTEST**

*LexisNexis Filing ID 10982505*

Mont “T” Que Inc. (“MTQ”), has protested the award of a contract to Patch Management, Inc., for rental of spray patchers with drivers/operators for pothole patching and road repair services. The contracting officer rejected MTQ’s bid as nonresponsive because MTQ’s bid price, although apparently substantially lower than Patch’s bid price, was ambiguous. MTQ’s bid contained hand-written notations under the price schedule table seemingly identifying prices for materials. The District filed an Agency Report asserting that the protest was untimely filed and that the decision to reject MTQ’s bid was correct. We conclude that MTQ timely filed the protest but that the contracting officer properly determined that MTQ’s bid was ambiguous due to the handwritten annotations on the price schedule and thus nonresponsive. Accordingly, we deny the protest.

**BACKGROUND**

On August 1, 2005, the District’s Office of Contracting and Procurement (“OCP”) issued Invitation for Bids No. POKT-2005-C-0082-CM on behalf of the District Department of Transportation (“DDOT”) for the rental of spray patchers with drivers/operators for pothole patching and road repair services. (Agency Report (“AR”) at 2-3; AR Ex. 1). Section B.2 of the solicitation contemplated a requirements contract with payment based on fixed-unit prices for specified services. The price schedule under section B.3 provided as follows:

Contract Line Item No. (CLIN)	Item Description	Monthly Rental Rates	Estimated Quantity	Total Rate for 12 months Rental Period
0001	Rental of spray injection patchers with drivers /operators and materials for pothole patching and road repair services	\$ _____	3	\$ _____

Under the table, was the following:

Prices shall be effective for a period of one (1) year from date of award. The District reserves the right to exercise the option years for three (3) additional years at the same price, terms and conditions.

Bid opening was on September 6, 2005, with bids submitted by MTQ and Patch. (AR Exs. 1 and 2). Patch's bid for twelve months was \$892,800.00, based on a monthly unit price of \$24,800. (AR Ex. 9). MTQ's price schedule in the bid read as follows:

Contract Line Item No.(CLIN)	Item Description	Monthly Rental Rates	Estimated Quantity	Total Rate for 12 months Rental Period
0001	Rental of spray injection patchers with drivers /operators and materials for pothole patching and road repair services	\$ <u>16,000</u>	3	\$ <u>48,000</u> x 12 = \$576,000

Below the price schedule table, appeared the following handwritten notations made by MTQ:

Unit Cost

Diesel Fuel \$5.00 per gallon

Asphalt per ton \$48.00

Liquid TAC \$40.00 per 5 gallon bucket

(AR Ex. 3). By memorandum dated September 15, 2005, the contracting officer found MTQ's bid nonresponsive "for failure to include the cost for required materials in its unit bid price as required in Section B of the solicitation." (AR Ex. 4). The contracting officer requested advice from OCP's legal counsel regarding the finding that MTQ's bid was nonresponsive. (AR Ex. 4). OCP legal counsel advised OCP to issue a letter to MTQ requesting that MTQ clarify whether it intended to include the handwritten information below the CLIN No. 0001 price schedule in its bid. (AR Ex. 5). By letter of October 13, 2005, the contracting officer wrote to MTQ:

The Office of Contracting and Procurement (OCP) has reviewed your bid submitted in response to the above referenced solicitation. OCP is seeking clarification of the handwritten information on the Price Schedule page with respect to the instructions under Section C.1 of the solicitation.

Please advise if the handwritten information is to be included in the total bid price. Your response should be received in [this] office by October 21, 2005.

(AR Ex. 6). On October 13, 2005, the contract specialist sent the clarification letter to MTQ via United Parcel Services and UPS confirmed that MTQ received the clarification letter on October 14, 2005.

(AR Ex. 8). On October 13, 2005, the contract specialist also attempted to contact MTQ by telephone and to fax the letter to MTQ using the numbers provided in its bid. Both telephone numbers in the bid were disconnected and the fax transmission to the listed MTQ fax number failed. (AR Exs. 2 and 9). MTQ never responded to the October 13, 2005 clarification letter. On November 9, 2005, the contracting officer called MTQ and left a voicemail message giving MTQ until close of business on November 10, 2005, to respond. MTQ did not respond. (AR Ex. 9). By a determination and findings dated November 23, 2005, the contracting officer decided to award the contract to Patch because MTQ's bid was ambiguous as to its total price. (AR Ex. 9). The contracting officer determined that Patch's bid of \$24,800 per month was fair and reasonable based on the government estimate of \$24,500 per month. On December 23, 2005, Patch received award of Contract No. POKT-2005C-0082-CM pursuant to the solicitation. (AR Ex. 12). On January 5, 2006, the contract specialist mailed to MTQ a notice of the contract award to Patch which is dated January 4, 2006.

On January 12, 2006, MTQ filed its protest, alleging that MTQ had the lowest bid price and should have been awarded the contract. The District filed its Agency Report on February 2, 2006. MTQ responded to the Agency Report on February 16, 2006. In its response, MTQ claims that its bid price was \$576,000 and that the "handwritten information at the bottom of page 3 – section B.3 had nothing to do with the bid price in Line item CLIN 0001."

## DISCUSSION

We exercise jurisdiction pursuant to D.C. Code § 2-309.03(a)(1).

The District argues that the protest is untimely because MTQ should have known the basis of its protest on October 14, 2005, when it received the October 13 clarification letter. Citing our decision in *Sigal Construction Corp.*, CAB No. P-0690, et al., Nov. 24, 2004, 52 D.C. Reg. 4243, 4254-56, the District argues that the clarification letter was "functionally equivalent to an official action taken by the contracting officer which is adverse to MTQ . . . ." (AR at 6). We do not agree. That communication from the contracting officer required MTQ to respond, clarifying its bid, but it did not constitute any adverse action against MTQ. MTQ's receipt of the January 4, 2006 notice of the award started the 10-day period for filing its protest. Since MTQ filed its protest on January 12, the protest was timely.

On the merits, we deny MTQ's protest because the handwritten notations created an ambiguity in MTQ's bid price. "Bids that are indefinite, uncertain, or ambiguous are normally rejected as nonresponsive." J. Cibinic & R. Nash, *Formation of Government Contracts* 569 (3d ed. 1998). Although the annotations on MTQ's bid could be interpreted as simply reciting elements already incorporated in the monthly unit price, it is also reasonable to read the notation as providing the pricing for road repair materials beyond what is specified in the monthly unit price which would require additional payment by the District government. Under the latter interpretation, the bid would be nonresponsive as it did not offer a firm fixed price as required by the IFB. See, e.g., *Reid & Gary Strickland Co.*, B-239700, Sept. 17, 1990, 90-2 CPD ¶ 222 (notation on Strickland's bid that it had "allowed \$500,000" for doors rendered the bid ambiguous as to price and thus nonresponsive). Section B.2 of the solicitation required bidders to submit fixed unit prices. MTQ's handwritten "unit cost" information on the price schedule page rendered the bid ambiguous as to whether MTQ's bid included these handwritten "unit cost" amounts for materials. Since MTQ's bid was ambiguous as to the total bid price, the contracting officer properly determined to reject MTQ's bid as nonresponsive.

For the reasons discussed above, we deny MTQ's protest.

**SO ORDERED.**

DATED: April 6, 2006

/s/ Jonathan D. Zischkau  
JONATHAN D. ZISCHKAU  
Chief Administrative Judge

CONCURRING:

/s/ Warren J. Nash  
WARREN J. NASH  
Administrative Judge