

GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

PROTEST OF:)
)
CHESAPEAKE BUS & EQUIPMENT CO.) CAB No. P-611
)
Under IFB No. 99-0110-AB-0M-CM)

For the Protester: Arnold L. Tunis, President. For the Government: Warren J. Nash and Chris Malone, Assistants Corporation Counsel, D.C.

Opinion by Lorilyn E. Simkins, Chief Administrative Judge with Administrative Judges Phyllis W. Jackson and Matthew S. Watson, concurring.

OPINION

Chesapeake Bus & Equipment Co. ("Chesapeake") protests the rejection of its low bids as non-responsive on Items 15 and 16 of IFB No. 99-0110-AB-0M-CM for Light, Medium and Heavy Duty Vehicles and Equipment issued by the Department of Public Works and award of those items to Atlantic Transportation Equipment ("Atlantic"). Chesapeake's bid for Item 15, a 12 passenger minibus with two wheelchair positions, allegedly misstated the gross vehicle weight rating as lower than the actual rating for the vehicle offered and therefore did not conform to the required specifications. Despite Chesapeake's cover letter claiming that its bid was completely in accordance with all specifications, Chesapeake's apparent misstatement of the gross vehicle weight rating created, at best, an ambiguity which cannot be changed or clarified after bid opening, and was properly rejected as non-responsive. Chesapeake's bid for Item 16, a 16 passenger minibus with two wheelchair positions was rejected because, although the bid identified the engine in the vehicle offered, it did not specifically state that the identified engine was a V-8 engine. The descriptive literature submitted with the bid as requested in the IFB, however, demonstrated that the minibus which Chesapeake proposed in item 16 did in fact conform to the bid specifications. Chesapeake's bid for Item 16 should have been accepted. We therefore deny Chesapeake's protest for Item 15 and grant its protest for Item 16.

BACKGROUND

The District of Columbia Department of Public Works ("DPW") issued IFB No.99-0110-AB-0M-CM ("IFB") on June 14, 1999, seeking bids for Light, Medium Heavy Duty Vehicles and Equipment in the Open Market (Agency Report "AR" Ex. 1) Bid opening occurred on July 30, 1999. (AR, Exs. 1 and 3). Chesapeake and Atlantic were the only bidders for Items 15 and 16. The IFB required each bidder to submit descriptive literature to establish the details of the products the bidder proposed to furnish as to design, material, quality, construction and performance characteristics. Bidders were informed that failure of the descriptive literature to show that the product offered conformed to the specifications would require rejection of the bid. (AR, Ex.1, § 23).

By memorandum dated August 23, 1999, Edward Love, Technical Writer, Fleet Services Division, DPW, evaluated the bid documents submitted by the various bidders for responsiveness to

the IFB. (AR, Ex. 3). For Item 15, the minimum gross vehicle weight required by the IFB was 14,050 pounds. In its bid, Chesapeake entered the term “11,500 LBS” in the blank space provided for bidders to specify the weight of the vehicle. Mr. Love determined that Chesapeake’s bid for Item 15 was 2,550 pounds under the minimum weight requirement of the specifications.

Chesapeake’s bid for Item 16 set forth the engine configuration of the vehicle as a “7.3 Diesel.” The IFB stated that the minimum configuration was a V-8. In the bid evaluation memorandum, Mr. Love determined that Chesapeake did not designate a V-8 engine as required by the specification, and determined that Chesapeake’s bid did not conform to the IFB. (AR, Ex.3). In footnote 2 to the Agency Report, the District acknowledges that it was unable to locate the descriptive literature submitted by the bidders. On December 10, 1999, the Chief Procurement Officer signed a Determination and Finding (“D& F”) for Award to Other than Low Bidder. (AR, Ex. 4). On January 28, 2000, DPW awarded to Atlantic the contract for Items 15 and 16. On February 3, 2000, Chesapeake filed this protest. The District filed its Agency Report on February 24, 2000. On March 28, and April 3, 2000, the Protester responded to the Agency Report. In its responses, Chesapeake asserts that the insertion of the number 11,500 in Item 15 was a clerical error, and that in actuality the vehicle weight was 14,500. Chesapeake asserts that the “7.3 Diesel” it offered for item 16 is a V-8 engine. With its response, Chesapeake attached a copy of the descriptive literature for the proposed vehicle. The descriptive literature makes clear that the 7.3 Diesel is in fact a V-8 engine.

DECISION

We exercise protest jurisdiction pursuant to D.C. Code § 1-1189.3 (Supp. 1998).

To be responsive, a bid, as submitted, must represent an unequivocal offer to perform without exception the exact specifications called for in the IFB so that the bidder will be bound to perform in accordance with all the material terms and conditions. *Marco Equipment, Inc.* 70 Comp Gen. 219, 91-1 CPD ¶ 107 (Jan. 31, 1991). To ensure that all bidders compete equally, and to ensure the integrity of the competitive bidding system, a bid which takes exception to a material IFB requirement, or is ambiguous with respect to a material requirement, may not be changed or clarified after bid opening and must be rejected as non-responsive. (*Id.*) .

We find that DPW reasonably concluded that Chesapeake’s offers on Item 15 did not conform to the IFB’s required vehicle weight, and that Chesapeake’s cover letter asserting full compliance, when read together with the bid entry, at best created an ambiguity as to Chesapeake’s offer. The bid entry of “11,500 L.S.” is not consistent with the claimed actual weight. We conclude that under these circumstances, DPW was correct in rejecting Chesapeake’s offer for Item 15.

With respect to Item 16, we find that the descriptive literature, which Chesapeake was required to submit by the IF, clearly demonstrates that the proposed minibus has a V - 8 engine and is not in conflict with the bid entry of “7.3 Diesel.” The descriptive literature states: “The 7-3L Power Stroke Direct Injection Turbo Diesel V - 8 engine is . . . built by Ford for

Navistar.” The descriptive literature established that the product would meet the listed solicitation requirement that the minibus contain a V-8 engine and creates no ambiguity when read together with the bid entry. DPW’s rejection of Chesapeake’s bid on Item 16 as non-responsive was therefore not reasonable. Accordingly, we sustain Chesapeake’s protest on Item 16 and find that it should receive the award for Item 16.

The protest is therefore denied in part and sustained in part.

DATE: May 10, 2000

LORILYN E. SIMKINS
Chief Administrative Judge

Concurring:

PHYLLIS W. JACKSON
Administrative Judge

MATTHEW S. WATSON
Administrative Judge