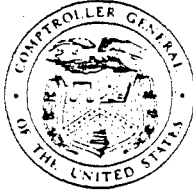


**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

51011

FILE: B-184316

DATE: August 25, 1975

MATTER OF: Robert Gay Construction Company

97455

**DIGEST:**

Where bid form contained a price schedule for three items, the third being the aggregate of the first two, and the bid form provided that the Government could accept any item or combination of items unless a bidder included a restrictive limitation thereon, it was proper to accept the bid of the low aggregate bidder on the third item who "no bid" the first two items.

Invitation for bids DAHA08-75-B-0003 was issued by the Property and Fiscal Officer for the Florida State Arsenal, St. Augustine, Florida (Departments of Army & Air Force, National Guard Bureau) for the construction of a Composite Maintenance Facility and Petroleum Operations Facility.

The Bid Form included therein set forth three items upon which bidders were invited to submit prices. Item No. 1 was a total bid price for the Composite Maintenance Facility; Item No. 2 was for the Petroleum Operations Facility; and Item No. 3 was a total bid price for Item 1 plus Item 2. The Bid Form stated that "the Government may accept any item or combination of items of a bid unless the Bidder includes in his bid a restrictive limitation."

Upon the opening of bids it was revealed that all bidders except Construction Southeast, Inc. (Construction) submitted a price for each item. Construction submitted a price only for Item No. 3, i.e., an aggregate price for both Items 1 and 2. Adjacent to Items 1 and 2, it inserted "No Bid." Inasmuch as Construction's aggregate bid price was not only the lowest submitted under Item 3, but also lower than any combination of individual prices of any of the bidders for Items 1 and 2, Construction was awarded a contract for all of the work pursuant to the Bid Form stipulation permitting acceptance by the Government of any item or combination of items.

Robert Gay Construction Company (Gay), which submitted the second low price under Item No. 3, and the lowest inserted price for Item No. 1, has protested that Construction's bid should have been considered nonresponsive and rejected accordingly for failure to insert a price for Item 1 and Item 2.

Gay points to language on the first page of the invitation stating that "bids must set forth full, accurate and complete information as required by this invitation for bids (including attachments)." Gay then references the Bid Form itself which states that "in compliance with the above-dated invitation for bids, the undersigned hereby proposes to perform all work for [the described project.]" We understand Gay's contention to be that Construction was not in compliance with the invitation for bids because the insertion of "No Bid" for Items 1 and 2 did not comply with the language on the first page of the invitation calling for full, accurate and complete information. Gay then alludes to the Instructions to Bidders included in the invitation (SF-22, October 1969 edition), where it is stated in paragraph 5(b), entitled "Preparation of Bids," that where the bid form explicitly requires that the bidder bid on all items, failure to do so will disqualify the bid. Gay contends that by virtue of the two previously cited provisions, bidders were explicitly required to set forth a price for each item, and Construction's failure to do so requires the consequential rejection of its bid.

The threshold question presented is whether the IFB explicitly required bidders to insert a price for each item. In this regard, paragraph 5(b) of the Instructions to Bidders also provides that bid forms may provide for submission of prices for more than one item, and that when submission of a price on all items is not required, bidders are to insert the words "no bid" in the space provided for any item on which no price is submitted.


The language on the first page of the invitation calling for full, accurate and complete information as required by the invitation is general in nature. It is followed by a reference to the criminal penalty for making "false statements." Not only does this provision leave open what information the IFB may elsewhere require, but it appears directed more to statements, representations or descriptive literature that bidders may tender with their bids rather than the insertion of a bid price.

With regard to the IFB's requirement for insertion of bid prices, the language on the face of the bid form would appear to govern that matter. Since it explicitly permitted bidders to include restrictive limitations in their bids for the items involved, we must conclude that a price for each item was not required and that Construction's insertion of "No Bid" for items 1 and 2 was in accord with paragraph 5(b) of the Instructions to Bidders.

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As such, Construction's restriction was tantamount to an "all or none" bid. A low bid on an "all or none" basis must be considered responsive in the absence of a provision to the contrary in the solicitation. See 52 Comp. Gen. 756, 759 (1973); also 54 Comp. Gen. 416, 418 (1974). Moreover, where, as here, an invitation permits multiple awards, it is a well settled principle that an "all or none" bid lower in the aggregate than any combination of individual bids available may be accepted by the Government even though a partial award might possibly be made at a lower unit cost. 54 Comp. Gen. 416, 420 (1974). In view thereof, and of our foregoing discussion, we are compelled to conclude that the acceptance of Construction's bid and the ensuing award are not subject to legal objection.

Accordingly, the protest is denied.

  
Acting Comptroller General  
of the United States