

DECISION



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

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FILE: B-184697

DATE: February 12, 1976

MATTER OF: Oliver Septic Tank and Swimming Pool Company, Inc.
T.A. Sheets Mechanical General Contracting

DIGEST:

Contracting officer properly interpreted note attached to bid as not offering two prices for same item of work but as offering two prices for work to be performed under two different factual circumstances. Bid was correctly evaluated by disregarding that portion of note contingent upon circumstances not present in procurement and using price in portion of note which corresponded to facts of procurement.

Sheets and Oliver were two of the bidders responding to invitation for bids (IFB) No. DAET57-75-B-0085 for the replacement of fire hydrants at Fort Eustis, Virginia. Appended to Sheets' bid was a note, the legal effect of which is the subject of Oliver's protest.

It appears from the file submitted by the procuring agency that at Fort Eustis are approximately 300 fire hydrants which through age have become unreliable in operation and are in need of replacement. Under this procurement, the contractor is to excavate around existing hydrants, remove them, replace them with new hydrants, and backfill the excavations.

Apparently in anticipation that most of the existing hydrants were buried to a depth of 3 feet 6 inches, the six bid items for replacing various quantities of hydrants were solicited as follows:

"Replace * * * fire hydrants complete in conformance with technical specifications and drawings including excavation, trenching and backfilling with depth of burial 3 ft 6 in."

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The solicitation provided for the contingency that some hydrants might be buried at a greater depth by also requesting bids to:

"Furnish and install extension barrels as required for burial depths below 3 ft. 6 in. in increments of 6 in. including excavation, trenching and back-filling in accordance with specifications and drawings."

Bidders were to provide unit and total prices for an estimated quantity of 80 of these 6-inch extensions.

At the time the IFB was issued, the procuring activity did not know what funds would ultimately be available for the project. Therefore, the project was divided into a base bid and Additive Bids 1 through 5. The base bid consisted of Item 1.1, replace 48 fire hydrants, and Item 1.2, furnish and install extension barrels. A space was provided for the bidder to insert the total price for these items. Additive Bids 1 through 5, which comprised Items 2 through 6 of the IFB Schedule, were for replacing 56, 54, 57, 37 and 44 fire hydrants, respectively, in various geographical areas of the post as shown on a map included within the IFB.

Eight bids were received. Sheets uniformly bid a unit price of \$455 for replacing the fire hydrants. For Item 1.2, the extension barrels, Sheets bid a unit price of \$220. However, attached to Sheets' bid was a handwritten note which stated in its entirety:

"1. on bid item 1.2 the \$220 is in refer to hydrant that are not replaced that need raising.

"2. on hydrant that are replaced add \$25.00 for each additional 6" of depth."

"[s] T. A. Sheets Owner"

The contracting officer gave effect to this note by evaluating Sheets' unit price for Item 1.2 as \$25.00, thereby resulting in Sheets' receiving the award as the low bidder. The sole basis of Oliver's protest is that "T. A. Sheets submitted a note with his bid qualifying his bid with two unit prices. We submit that this is unethical, if not illegal, therefore his bid should be invalidated."

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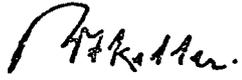
We believe that when read with the bid as a whole, the meaning of the note is clear. In paragraph 1 of his note, Mr. Sheets advises that he will charge \$220 per unit for excavating and removing an existing fire hydrant, attaching a six-inch extension to the bottom of the barrel, reconnecting the hydrant and backfilling the excavation. Mr. Sheets advises he included this note because he was unsure whether work of this nature would be required. In fact, the IFB did not require raising existing hydrants, as opposed to replacing them, so this portion of Mr. Sheets' note had no relevance to the actual work to be done.

In paragraph 2, Mr. Sheets states that the cost of an extension beyond a depth of 3 feet 6 inches on hydrants to be replaced will be \$25 per six-inch increment (IFB Item 1.2). (Mr. Oliver bid a unit price of \$15 for Item 1.2.) This work was included within the IFB.

The note attached to Sheets' bid, therefore, did not provide two prices for the same work, but two prices for work to be performed under two different factual circumstances, one of which was not present in this procurement. Paragraph 1 of Mr. Sheets' note was concerned with a situation where in pricing an extension he had to take into account the cost of excavating and reinstalling an existing hydrant. Paragraph 2 of Mr. Sheets' note concerned a situation where providing an extension beyond a depth of 3 feet 6 inches was merely incidental to the replacement of existing hydrants, the cost of which was already included within one or more of the other items in the bid schedule. We think the contracting officer properly interpreted Sheets' note as showing that the unit price of \$220 was contingent upon circumstances which in fact did not exist, and correctly regarded \$25 as Sheets' unit price for the work to be done under this contract.

Oliver's protest is therefore denied.

The procuring agency notes that the IFB contained conflicting provisions as to how the base bid and additive items were to be evaluated for award and in the agency's opinion Item 1.2 of the IFB Schedule should be clarified. For these reasons, which were not raised by Oliver's protest, the agency has indicated that it may terminate Sheets' contract for the convenience of the Government and readvertise. We have no comment upon the propriety of the proposed termination, since that decision is committed to the discretion of the agency. Sauk Valley Mfg. Co., B-182810, June 10, 1975, 75-1 CPD 352.


Deputy Comptroller General
of the United States