

DOCUMENT RESUME

02984 - [A2013084]

[Protests against Failure to Acknowledge Amendment and Correction of Bid Error]. B-188812. July 13, 1977. 5 pp.

Decision re: Aloha Maintenance Service; Dependable Janitorial Service and Supply; U.S. Royal Maintenance Co.; by Paul G. Dembling (for Elmer B. Staats, Comptroller General).

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law I.

Budget Function: National Defense: Department of Defense - Procurement & Contracts (058).

Organization Concerned: Department of the Navy.

Authority: Service Contract Act of 1965 (41 U.S.C. 351 et seq.).

A.S.P.R. 2-405, 2-406. B-183529 (1975). B-184268 (1975).

B-187220 (1976). 51 Comp. Gen. 293. 54 Comp. Gen. 686.

B-181489 (1974).

Protest against other bidders' failures to acknowledge invitation for bids amendment was dismissed as amendment merely clarified performance without increasing cost or work. Bidder's upward correction of unit price did not affect total price of bid and was therefore acceptable. Protest was denied.
(Author/DJM)

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02984

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20540

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FILE: B-188312

DATE: July 13, 1977

MATTER OF: Dependable Janitorial Service and Supply Company

DIGEST:

1. Where amendment to IFB merely clarified required performance and did not increase cost or scope of work specified, failure to acknowledge amendment may be waived as minor informality.
2. IFB provided space to enter unit (monthly) and total (contract year) bid prices, with award to be on basis of total bid. Where low total bid contains discrepancy between unit and total prices, and only total price reasonably could be regarded as intended bid, unit price may be corrected upward to reflect unit price consistent with total.

Invitation for bids (IFB) No. N62474-77-B-2348 for daily and weekly janitorial services over a 12-month period was issued by the Department of the Navy on March 9, 1977. Section 1A.27 of the IFB provided that "daily service," which was to be performed five times per week, Monday through Friday, was not required on nine national holidays listed in the solicitation. Bidders were further advised that the procurement was subject to the provisions of the Service Contract Act of 1965, 41 U.S.C. § 351 et seq. (1970), which requires that fringe benefits including holiday pay be specified. 41 U.S.C. § 351(a)(2) (1970). The IFB at page 1A.2 included in the fringe benefits nine paid national holidays. The first page of the IFB provided spaces to enter a unit (monthly) bid and a total bid. Award would be based on the low total bid.

The IFB also included an appendix B, entitled "Summary Price Schedule," which indicated that daily service would be performed 251 times during the contract year, and left spaces for bidders to enter the cost per daily service for each area to be cleaned, and the bid amount for each area, which was to be the cost per daily service multiplied by 251, the number of daily servicings required. A space was also provided for a total bid entry, presumably the sum of the bid amounts for all daily, weekly and other servicings. Appendix B was to be submitted by the awardee to the contracting officer within 10 days after receipt of notice of award.

B-188812

On March 23, amendment 0001 to the IFB was issued to amend appendix B to clarify that daily service was required "260 [times per contract year] (less holidays)." The Navy states that the amendment was issued "in response to a bidder's suggestion that the listing of '251' [in appendix B] * * * might lead bidders to compute bids on the basis of 251 days times the labor rate, thereby ignoring the requirement for holiday pay."

The three lowest of the 16 bids received were as follows:

	<u>Unit Price</u>	<u>Total</u>
U.S. Royal Maintenance Company (U.S. Royal)	\$ 3.19	\$21,398
Aloha Maintenance Service (Aloha)	1,850.00	22,200
Dependable Janitorial Service and Supply Company (Dependable)	2,180.00	26,160

On April 11, Dependable filed a protest in our Office against award under the IFB to either U.S. Royal or Aloha on the basis that neither bidder formally acknowledged amendment 0001 by noting its receipt in the space provided in the solicitation. In this connection, section 18.3.2 of the IFB warned bidders that failure to refer to amendments "may constitute an informality in the bid."

In addition, U.S. Royal has advised the Navy of an error in its bid. U.S. Royal alleges that its intended unit price was \$1,783.16 (its total bid divided by 12 months), and not the \$3.19 figure entered. U.S. Royal states that "\$.319 or .31-9/10 * * * was used as a square footage factor which does not represent the Unit Price as defined on the bid sheet."

In regard to the failure to acknowledge receipt of an amendment to an IFB, Armed Services Procurement Regulation (ASPR) § 2-405 (1976 ed.) authorizes a contracting officer to allow a bidder the opportunity to cure any deficiency resulting from a "minor informality or irregularity" in a bid, or to waive such deficiency if it is to the advantage of the Government. The regulation provides the following example of a "minor informality or irregularity":

B-188812

"(iv) failure of a bidder to acknowledge receipt of an amendment to an invitation for bids, but only if --

"(A) The bid received clearly indicates that the bidder received the amendment * * * or

"(B) The amendment clearly would have no effect or merely a trivial or negligible effect on price, quality, quantity, delivery, or the relative standing of bidders * * *."

U.S. Royal alleges that it in fact "did make the necessary adjustments in our computation prior to submitting our bid." U.S. Royal argues that the amendment had no effect on price, since the IFB as initially issued clearly required bidders to prepare their bids on a 260-day basis. U.S. Royal thus contends that amendment 0001 "merely constituted another manner to state what were already clear contract requirements."

Aloha completed and submitted with its bid the Summary Price Schedule issued with the IFB. Each time that the number "251" appeared on that form to indicate the number of times during the contract year that daily service was required, it was crossed out and the figure "260" was inserted. Although Dependable suggests that such substitution may have been made by a Government employee "for the sake of clarity in evaluating the bids after opening," the record indicates that the alteration was made by the bidder.

As stated above, the IFB as issued on March 9 required daily service Mondays through Fridays over a 12-month period, excluding nine national holidays and required the contractor to furnish its employees holiday pay. We believe that those provisions sufficiently advised that bids should take into consideration 251 daily service days (the number of weekdays less national holidays in the contract year) plus holiday pay for the nine holidays listed. Moreover, we do not believe that the indication in the Summary Price Schedule, which was not required to be submitted with a bid (and was not submitted by U.S. Royal), that daily service was to occur 251 times in the contract period is inconsistent with that view. Accordingly, we agree with U.S. Royal's

E-188812

view that amendment 0001 merely clarified existing requirements, and did not in any way increase the cost or the scope of work specified. Under the circumstances, failure to acknowledge the amendment would not affect a bidder's obligation to perform in full accordance with the terms, conditions and specifications of the IFB, as amended. Such failure may, therefore, be waived under ASPR § 2-405(iv)(B) (1976 ed.). Harold N. Hall Construction, Inc., B-184268, September 23, 1975, 75-2 CPD 175; 51 Comp. Gen. 293 (1971).

In addition, in view of the changes made by Aloha on the Summary Price Schedule submitted with its bid, Aloha's failure to acknowledge amendment 0001 could be waived by the contracting officer pursuant to ASPR § 2-405(iv)(A) (1976 ed.), set out above. In this connection, and consistent with that regulation, we have held that submission of a bid which on its face reflects knowledge of an essential element included in a solicitation amendment constitutes constructive acknowledgement of receipt of the amendment so as to bind the bidder to perform all of the changes enumerated in the amendment. Square Deal Trucking Company, Incorporated, B-183529, August 19, 1975, 75-2 CPD 115.

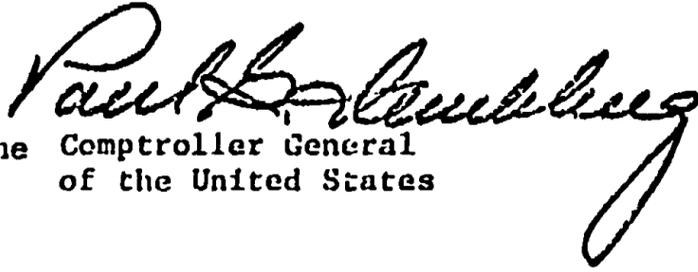
In regard to U.S. Royal's unit and total bid prices, we believe that the only reasonable construction of the bid is to consider the total bid price as controlling, and to divide it by 12 to arrive at a unit price. Consequently, since award was to be based on the low total bid, and U.S. Royal's total bid and its unit price as computed in this manner are consistent with the bidding progression, an upward correction of the unit price to be consistent with the total price would not prejudice any other bidder. Therefore, we do not consider that U.S. Royal's entry of \$3.19 in the unit price column prevents consideration of its total bid for award. See Federal Aviation Administration - Bid Correction, B-187220, October 8, 1976, 76-2 CPD 326; Atlantic Maintenance Company, 54 Comp. Gen. 686 (1975), 75-1 CPD 108; Berc Building Maintenance Company, B-181489, September 6, 1974, 74-2 CPD 153.

In view thereof, we believe that U.S. Royal's unit price entry may be considered a "clerical mistake" apparent from, and correctable on the basis of, the face of the bid. It may, therefore, be corrected by the contracting officer pursuant to ASPR § 2-406 (1976 ed.). Since award to U.S. Royal on the basis of its total bid price would

B-188812

effectively bind the bidder to perform at its total bid price in accordance with the advertised terms of the solicitation, award may be made to that firm.

The protest is denied.


For the Comptroller General
of the United States