

7385
DECISION



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

E. P. [unclear]
Proc I

FILE: B-191749

DATE: August 16, 1978

MATTER OF: Shamrock Five Construction Company

DIGEST:

1. Where contract award for estimated quantities of two items is to be made as a whole to one bidder, failure of low bidder to change unit and extended prices on bid schedule to reflect total price reduction made on bid does not render bid nonresponsive, since price for unit items can be determined from total price.
2. Where initial total price figure of \$220,745 is crossed out and amount of \$205,745 is inserted as revised total price followed by notation that "total may be reduced to \$205,745," only reasonable interpretation is that bidder intended \$15,000 price reduction.

Shamrock Five Construction Company (Shamrock) protests the proposed rejection of its bid as nonresponsive under invitation for bids (IFB) F29650-78-B0031, issued March 3, 1978, by the Air Force Contract Management Division, Kirtland Air Force Base, New Mexico.

Nine bids were received and opened on April 11, 1978. Shamrock's owner, Mr. Robert V. Fitzgibbon, states that shortly before bid opening his supplier informed him of a price reduction which permitted the firm to reduce its bid by \$15,000. Upon receipt of this information, Mr. Fitzgibbon changed the bid. The bid as submitted on the bid schedule appears as follows:

ITEM	DESCRIPTION	EST QTY	UNIT	UNIT PRICE	AMOUNT
0001	Install New Garage Doors	700	EA	\$304.92	\$213,444.00
0002	Remove Garage Door	700	EA	\$ 10.43	\$ 7,301.00

total items 0001 and 0002 \$220,745 RVF

total may be reduced to \$205,745. ⁰⁰/_{XX}"

Mr. Fitzgibbon did not change any of the unit prices or extended prices in the bid. As a result, those prices do not agree with the altered price of \$205,745.

The IFB provided that award would be made in the aggregate. Shamrock's bid of \$205,745 was the lowest total bid received, but the contracting officer determined that the bid must be rejected as nonresponsive on the grounds that the unit price intended was not definite and the use of the words "may be reduced" created doubt as to the bidder's intent. The contracting officer states that without an unambiguous unit price being offered, there is no possible method by which the quantum of payment can be determined since the contractor is to be paid the unit price multiplied by the number of units ordered by the Government.

The second low bid was submitted by Gerald A. Martin, Ltd. (Martin), which bid \$288.57 per unit for item 0001 and \$10.00 per unit for item 0002 for a total price of \$208,999. Thus, Shamrock's amended total amount is lower than Martin's, while the amount of Shamrock's unit price for item 0001 is higher than Martin's. Award is being withheld pending resolution of the protest.

The contracting officer contends that the only way in which Shamrock's total bid price as amended could be related to a decrease in the unit price of each of

the two items in the bid schedule would be to take its explanation after bid opening as to how much the firm intended to reduce each of the two unit prices in order to reconcile such prices with the revised total bid. The Air Force contends that to accept Shamrock's explanation after bid opening would be improper because the integrity of the competitive bidding system would be compromised. Further, the Air Force has some doubt whether Shamrock's "lump sum bid" would be binding upon the firm since the bid did not state that the price was reduced to \$205,745 for the specified quantity estimated, but only stated that the price "may be reduced to \$205,745." In using this permissive language, the Air Force questions whether Shamrock was merely reserving an option to reduce its price.

The issues here are whether Shamrock's bid is responsive to the material requirements of the IFB and whether it is capable of being evaluated on an equal basis with other bids. This concerns whether Shamrock unequivocally has offered to perform the work at a definite price in total conformance with the terms and specifications of the invitation. Lift Power Inc., B-182604, January 10, 1975, 75-1 CPD 13. Shamrock's bid imposes no conditions and is not ambiguous or subject to doubt as to its intent to be legally bound to perform in accordance with the IFB. The language of Shamrock's bid reasonably can be interpreted only as offering a total price of \$205,745. In that regard, the specifications stated:

"1-01. THIS CONTRACT consists of furnishing all plant, labor, equipment and materials and performing all operations in connection with Replacing Garage Doors, 700 Military Housing Units (Zia Park) in accordance with the contract plans and the specifications dated 1977 Dec. The work in general consists of the following:

- A. Remove existing garage doors complete.
- B. Install new steel sectional doors complete with track, hangers, weather seals, hardware, counter-balance springs and pull up devices."

From the specifications, it is clear that the contract contemplates the removal of old garage doors and the installation of new garage doors and that one is not to occur without the other. The specific price for each door removed and installed can be determined by dividing 700 units (estimated quantity) into the total price of \$205,745 which results in a unit price of \$293.92. The fact that we cannot determine how Shamrock intended to allocate the \$15,000 reduction between the two items is immaterial since we know that the doors are to be removed and replaced on a one-to-one basis. The division of the cost between the two operations in the circumstances is simply a matter of accounting and not necessary for determining the total amount the contractor is to be paid for replacing each door and who the successful contractor is on the aggregate evaluation basis specified in the IFB. Shamrock's total price of \$205,745 evaluated at \$293.92 for items 0001 and 0002 is capable of comparison with other bids on an equal basis and is the lowest evaluated price. Therefore, there is no impediment to an award to Shamrock. I.T.S. Corporation, B-190562, January 24, 1978, 78-1 CPD 64.

The facts in the present case are clearly distinguishable from those in 49 Comp. Gen. 107 (1969) and B-156145, March 8, 1965, cited by the Air Force in support of its view that Shamrock's bid is nonresponsive. The cases cited involved situations where the prices bid were readily susceptible of being interpreted as offering either one of two prices, one of which would result in the lowest bid while the other would not. Since it could not be determined from the bids what prices were intended, and to allow an explanation after

bid opening might displace another bidder, we held that acceptance of such a bid would be improper and that a bidder could not be permitted to correct its bid under these circumstances.

In the present case, Shamrock's bid stated that the "total may be reduced to \$205,745. ~~00~~⁰⁰", the amount of \$220,745 was crossed out and the change was initialed (RVF) by the bidder. In changing the total price, Shamrock manifested an intention to reduce the unit price of item 0001 and/or item 0002 since the total price is arrived at by multiplying the unit prices of items 0001 times 700 and 0002 times 700 and adding the two resulting amounts to obtain an aggregate total price. In B-156145, *supra*, we indicated that if a bidder included "in the bid some reference, however worded, to show that the amount stated as the total was knowingly and purposely different from the mathematical total of the two bid items" the bid would not be ambiguous. Shamrock's action meets that requirement and therefore is not ambiguous.

Further, we do not agree with the Air Force position that the intent of Shamrock's words, "may be reduced," is unclear. In crossing out the \$220,745 amount and replacing it with \$205,745, Shamrock obviously intended that its price was to be reduced \$15,000. Any other interpretation would be unreasonable under the circumstances.

Accordingly, the protest is sustained and Shamrock's bid should be considered for award if otherwise proper.


Deputy Comptroller General
of the United States