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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20543

[Protest Alleging Awardee's Bid Was Nonresponsive]

FILE: B-198746

DATE: October 24, 1980

MATTER OF: Casson Construction Company, Inc.

DIGEST:

Bidder's failure to bid on alternate item which was not selected for award by procuring activity does not render bid nonresponsive.

(Casson Construction Company, Inc. (Casson), has protested the award of a contract to Sheehy Construction Company (Sheehy) under invitation for bids (IFB) No. DE-FB04-80-AL12174 issued by the Department of Energy (DOE), Albuquerque, New Mexico.)

The IFB was for the construction of a Wind Energy Test Center Building at Rocky Flats, Colorado. Fourteen bids were received and the three low bids were:

Blackinton and Decker, Inc.	\$1,848,958
Sheehy	1,917,300
Casson	1,943,000

Because of an error in its bid, the low bidder was permitted to withdraw its bid.

(Casson contends that it is the low responsive, responsible bidder because Sheehy failed to comply with the terms of the IFB by not bidding on all of the items and alternates.)

The IFB bid schedule contained a space for a base bid and nine alternates including:

"ALTERNATE No. 5

"Submit alternate quotations as provided by the Bid Form indicating the amount to be added or deducted for supplying and installing passive solar glass-glazed system as specified in Section A08840 which is:

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- double-glazed at all panels (alternate 5.A), or
- quadruple-glazed at all west-facing panels and triple-glazed at all other panels (alternate 5.B)"

Sheehy submitted a price for alternate 5.A and did not bid on alternate 5.B.

Section 5(b) of the instructions to bidders in the IFB advised, in part, "Where the bid form explicitly requires that the bidder bid on all items failure to do so will disqualify the bid." Further, paragraph 21 of the IFB provided:

"BASIS OF AWARD

"Award will be made to one bidder of:

- "1. The Base Bid, and
- "2. Such alternates, if any, as the Government elects to accept. Award of alternates, if any, will be made without regard to the numerical sequence shown on the Bid Form.

Bidders must bid on the Base Bid and all alternates."

Based on the funding available at the time of award and Sheehy's bid price, DOE decided to award the contract for the base bid plus alternates 1, 3, 6, and 7. DOE decided to award to Sheehy as being in the best interest of the Government, pursuant to section 1-2.407-8(b)(3) of the Federal Procurement Regulations, notwithstanding the pending protest.

DOE has cited numerous decisions of our Office which it contends state the rule applicable to a situation where a bidder fails to bid on an alternate item. The

general rule is stated in Hoyer Construction Co., Inc., B-181974, January 17, 1975, 75-1 CPD 36, wherein we noted:

"We have previously held that the failure of a bidder to respond to a request for prices on all alternates constitutes no basis, sufficient in itself, to require rejection of the bid.) Such an omission can only operate to the advantage of other bidders rather than to their disadvantage, since the bidder thereby eliminates itself from competition with the other bidders insofar as the alternate work is concerned.) Further, the request for alternate bids is solely for the benefit of the Government, and where a bid as made covers the entire work contemplated under one alternate, the failure to bid on another alternate does not preclude acceptance of a bid which covers the alternate selected for award by the Government. In such a case, however, the bidder does run the risk that should the Government elect to accept an alternate not bid upon his bid would then be non-responsive to that alternate. B-175055, March 28, 1972; 49 Comp. Gen. 639 (1970); 42 id. 61 (1962); B-168298, December 22, 1969. This rule applies even though bids on alternates are required by the clear language of the invitation, so long as it is administratively determined that the Government's best interest would be served by making an award on the item bid upon rather than the omitted alternate. 45 Comp. Gen. 682 (1966)."

Other decisions cited by DOE, which employ the same reasoning, are P&N Construction Company, Inc., 56 Comp. Gen. 328 (1977), 77-1 CPD 88; Edsall Construction Company, B-190722, March 29, 1978, 78-1 CPD 242; Iannuccillo Construction Co. and ACMAT Corporation, B-192954, December 13, 1978, 78-2 CPD 411; and Park Construction Company, B-190191, July 18, 1978, 78-2 CPD 42.

Casson, in arguing the nonresponsiveness of Sheehy's bid, contends this line of cases has been effectively overruled by Mitchell Brothers General Contractors, B-192428, August 31, 1978, 78-2 CPD 163; and Mars Signal Light Company, B-195659, December 13, 1979, 79-2 CPD 406.

Mitchell, supra, involved a protest against a bidder who inserted "No Bid" in two of three additive items under an IFB which included the same clause, instructions to bidders section 5(b), as here. We stated that since the bid form did not elsewhere explicitly require bidding on all items and the bidder had inserted "No Bid" as directed by the IFB, the bid was acceptable.

The Mars decision concerned an IFB which contained the following clause:

- "1. Bids/proposals are invited on an FOB Destination basis for items ALL. Bids submitted on any other basis will be rejected as nonresponsive."

The failure of a bidder to bid on one item did not require rejection of its bid since we found the above clause to require only that all bids submitted had to be on an FOB destination basis and no other clause specifically required bids on all items, citing Mitchell.

Casson argues that since both of these decisions accepted the responsiveness of the bids based on the fact that no other clause specifically required bids on all items, that here, where the IFB did specifically require bids on the base bid and all alternates (clause 21), Sheehy's bid should have been rejected.

We do not find, as alleged by Casson, that these decisions effectively overruled the prior line of decisions cited by DOE. Because of the facts of each, the issue involved here was never addressed in Mitchell or Mars.

Neither of the clauses cited in Mitchell or Mars were found to require bids on all items. Therefore, taken in conjunction with the statement in the decisions that no other clause in either IFB required bids on all items, the issue of what would have occurred if there had been such a clause, as here, was never reached.

If the issue had been reached, the cases cited by DOE and the rationale of Hoyer would have controlled. The applicable rule is that even though bids on alternates are required by the clear language of the invitations, so long as it is administratively determined that the Government's best interest would be served by making an award on the items bid upon rather than the omitted alternate, the bid is acceptable. Hoyer, supra.

The fact that bidders were told at the prebid site inspection to bid on all alternates does not, as alleged by Casson, change our holding that Sheehy's bid was acceptable for award.

The protest is denied.

Milton J. Fowler

For the Comptroller General
of the United States