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DECISION



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

[Protest of Bid Rejection as Nonresponsive]
FILE: B-201701.2 DATE: May 19, 1981

MATTER OF: Selland Construction, Inc.

DIGEST:

Where bid omits price for specific item and there is bid pattern from which it can be determined what price would have been for omitted item, bid may be corrected to include price.

DLGO 6703

DLGO 6704

AGC 00074

Selland Construction, Inc. (Selland), protests the prospective award of a contract to E. R. Fegert, Inc. (Fegert), pursuant to invitation for bids (IFB) No. R6-81-18C issued by the Department of Agriculture, Forest Service (Forest Service), calling for the construction of new roads and reconstruction of existing roads in Wenatchee National Forest.

Fegert submitted the low bid, \$597,686.25, with Selland submitting the second low bid, \$604,907.09. While reviewing Fegert's bid, the contracting officer (CO) discovered that Fegert failed to insert a price for Road No. 2125, Item 207(04), Developing Water Supply and Watering. Consequently, the CO rejected the bid as nonresponsive. The CO based his decision on the fact that the "Instructions and Supplemental Instructions To Bidders" and the statement at the top of each page of the Schedule of Items warned the bidders that failure to bid on each item would disqualify their bid. Shortly thereafter, Fegert protested the CO's determination.

Fegert's protest was forwarded to the Department of Agriculture's Office of General Counsel (General Counsel). Fegert argued, among other things, that, while Fegert inadvertently failed to enter a price for road No. 2125, item 207(04), that was a mistake which could be corrected.

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DLGO 02745

It was General Counsel's view that award should be made to Fegert. General Counsel, while citing the general rule that failure to include a price on every item required by an IFB renders a bid nonresponsive, see Farrell Construction Company, 57 Comp. Gen. 597 (1978), 78-2 CPD 45, concluded that Fegert's bid came within the limited exception to this rule. General Counsel believed that the pricing pattern in Fegert's bid documents established the existence of the error and the bid actually intended. It was General Counsel's position that the intended bid for road No. 2125, item 207(04), was \$250.

Subsequently, Selland requested that General Counsel reconsider its recommendation. It was Selland's position that Fegert's failure to price all of the IFB items rendered its bid nonresponsive. Moreover, Selland contended that Fegert's bid, as submitted, did not and could not show the amount intended for road No. 2125, item 207(04) and, therefore, did not fall within the limited exception.

General Counsel's response was to reaffirm its decision permitting correction of Fegert's bid. Once again, General Counsel focused on the pricing pattern of Fegert's bid and why the bid came within the limited exception allowing correction of the omission. General Counsel, while admitting that each road involved different amounts of work, pointed to the "nearly unbroken uniformity of Fegert's bid" for item 207(04), which suggests that Fegert did not consider the differences to be significant. We note that the CO still stands by his original decision that the bid is nonresponsive.

Once General Counsel reaffirmed its recommendation to award to Fegert, Selland filed a protest with our Office. In addition to the arguments presented to General Counsel, stated above, Selland argues that in order to preserve the integrity of the competitive bidding system, award should not be made to Fegert on the basis that the amount of item 207(04) is de minimis.

Fegert's bid, as it concerns item 207(04), which required a lump-sum bid, is synopsisized below:

<u>Road No.</u>	<u>Road Length (miles)</u>	<u>Estimated Quantity of Crushed Aggregate (tons)</u>	<u>Fegert's Bid</u>
2100-R	6.08	27,274	\$500
2100-R	1.27	390	250
2100-S	1.17	1,296	250
2100-U	1.03	96	250
2100-V	0.29	None	150
2100-W	0.27	80	250
2121	1.05	None	250
2124	0.79	227	250
2125	0.78	2,900	

As a general rule, we have held that a bid is nonresponsive on its face for failure to indicate a price on every item as required by the solicitation and may not be corrected. 52 Comp. Gen. 604 (1973). The rationale for this rule is that, when a bidder fails to submit a price for an item, it generally cannot be obligated to perform that service as part of other services for which prices were submitted. Regis Milk Company, B-180302, April 18, 1974, 74-1 CPD 203. However, this Office recognizes a very limited exception to this general rule in circumstances where the bid as submitted indicates not only the possibility of error but also the exact nature of the error and the amount involved. The exception is based on the premise that, where the consistency of the pricing pattern on the bid establishes the error and the price, to hold that bid nonresponsive would be to convert an obvious clerical error of omission to a matter of responsiveness. 52 Comp. Gen., supra.

When we apply the principles set forth in 52 Comp. Gen., supra, our conclusion is that Fegert's bid does come within the exception and, therefore, the omission can be corrected. It is clear that the price omission for road 2125, item 207(04), was an error. Further, there exists a bid pattern from which it can be determined that the bid for road No. 2125, item 207(04), would have been \$250. Although on the roads for which no crushed aggregate was involved Fegert bid \$150 for the shorter road and \$250 for the longer road, on all

the roads, with one exception, where crushed aggregate was involved, which was the situation with road No. 2125, Fegert consistently bid \$250 regardless of the length of the road or the amount of crushed aggregate involved. The only other road on which crushed aggregate was involved and on which Fegert bid \$500 does not disturb the pattern because item 207(04) for that road is concerned with an additional factor, royalties for water, which might have had a special effect upon the price. Therefore, correction of Fegert's bid to reflect a \$250 price for road No. 2125, item 207(04), is proper.

With respect to Selland's de minimis argument, since award to Fegert is not based on a de minimus theory, we need not consider it further.

Selland's protest is denied.



Acting Comptroller General
of the United States