

Wardell

18970

**DECISION**



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

FILE: B-201675.3

DATE: July 31, 1981

MATTER OF: John Mondrick Plumbing & Heating, Inc.

**DIGEST:**

1. Bid was properly rejected as nonresponsive where bidder merely acknowledged receipt of amendment increasing performance period from 6 months to 12 months but failed to submit price for additional 6-month period.
2. Protest against alleged improprieties in IFB (option provision, deletion of reimbursement clause and fixed monthly price) apparent prior to bid opening must be filed prior to bid opening date. Protest filed over 2-1/2 months after bid opening is untimely.
3. Issues which have been considered in previous GAO decisions are not "significant" under 4 C.F.R. § 21.2(c) (1981) exception to timeliness rules which sanction GAO consideration of untimely protest issues.

John Mondrick Plumbing & Heating, Inc. (Mondrick), protests the rejection of its bid by the Department of the Air Force, Griffiss Air Force Base (Air Force), under invitation for bids (IFB) No. F30635-80-B-0105, for military family housing maintenance services. Alternatively, Mondrick argues that the IFB should be canceled.

The IFB originally established a 6-month performance period with two 1-year options, each of which could be exercised only for a full 12 months. The Air Force amended the IFB to provide an initial performance period of 12 months.

*[Protest of Bid Rejection as Nonresponsive]*

115955

~~0144130~~

Mondrick, the low bidder, acknowledged the amendment but, rather than submitting the amended schedule for the 12-month performance period, Mondrick submitted the original schedule which covered only the 6-month period. Subsequently, Mondrick submitted a mistake in bid claim, which was initially accepted by the Air Force. However, the Air Force eventually determined that Mondrick's bid was nonresponsive and Mondrick's bid was rejected.

The protest is denied in part and dismissed in part.

Mondrick contends that, even though its bid was for half of the initial performance period, by signing the amendment Mondrick is obligated to perform in accordance with the terms therein. Mondrick argues that since it is obligated to perform for 12 months under the terms of the amendment, under mistake correction procedures, the bid price for the 6-month period should be doubled.

We do not agree. The mere acknowledgment of the receipt of an amendment increasing the total quantity of units to be purchased or services to be performed is not sufficient to constitute a bid for the additional units or services at the same price bid for the original quantity. See Contract Machining Corporation, B-201116, May 15, 1981; Ventura Manufacturing Company, B-193258, March 21, 1979, 79-1 CPD 194. Where, as here, a bidder does not insert a price on an amendment increasing the services to be provided under contract, doubt as to the price for the services and whether the bidder has bound itself to furnish the additional services is created. Moreover, Mondrick's error, the omission of 50 percent of the initial performance period, did materially change its bid and, therefore, cannot be waived as a minor informality. See Vanbar, B-184800, December 10, 1975, 75-2 CPD 385; Defense Acquisition Regulation (DAR) § 2-405 (DAC No. 76-17, September 1, 1978). In this circumstance, the bid is nonresponsive and must be rejected. Furthermore, mistake in bid procedures cannot be used to transform a nonresponsive bid into a responsive bid. Goodway Graphics of Virginia, Inc.--Reconsideration, B-193193, May 14, 1979, 79-1 CPD 342.

This case is distinguishable from Synergetics International, Inc., B-200801, March 5, 1981, 81-1 CPD 174. There, a bidder's omission of price data on an acknowledged amended schedule did not affect responsiveness since sufficient information had been included in the bid to derive the omitted data by application of simple mathematical calculation and the period of performance was unchanged.

Mondrick's alternate argument is untimely. Mondrick contends that the IFB should be canceled because the option clause violates DAR §§ 1-1500, 1-1502 and 1-1504 (DPC No. 76-6, January 31, 1977), the deletion, by amendment, of a reimbursement clause for materials makes the contract impossible to perform, and a fixed monthly price presents an opportunity for windfall profits. Mondrick indicates that it is aware that our Office could find its alternate argument untimely. However, Mondrick requests that we review the merits since the IFB is materially deficient and the protest is before award.

Section 21.2(b)(1) of our Bid Protest Procedures, 4 C.F.R. part 21 (1981), provides that:

"Protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of proposals shall be filed prior to bid opening or the closing date for receipt of initial proposals."

Mondrick's alternate argument is based on alleged apparent solicitation improprieties. Therefore, in order to be timely, a protest must have been filed before December 10, 1980, the bid opening date. Since Mondrick's protest was filed on March 3, 1981, over 2-1/2 months after opening, it is untimely and not for consideration on the merits.

As for the consideration of the protest under the "significant issue" exception of 4 C.F.R. § 21.2(c) (1981), we have held that this exception to our timeliness rules refers to the presence of a principle of widespread procurement interest, 52 Comp. Gen. 20, 23 (1972), and must be invoked "sparingly if our timeliness

standards are not to become meaningless." Catalytic, Incorporated, B-187444, November 23, 1976, 76-2 CPD 445. Furthermore, previously considered issues are not "significant" within the meaning of 4 C.F.R. § 21.2(c). Our review of Mondrick's alternate argument discloses that the issues have been previously considered. See K. P. Food Services, Inc., 60 Comp. Gen. 1 (1980) (options); Science Spectrum, B-189886, January 9, 1978, 78-1 CPD 15 (impossibility); and Midwest Engine, Inc., B-194748, August 8, 1979, 79-2 CPD 97 (pricing method). Accordingly, we will not consider Mondrick's alternate argument on the merits.

Protest denied in part and dismissed in part.



Acting Comptroller General  
of the United States