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DECISION



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

FILE: B-209470

DATE: February 8, 1983

MATTER OF: Stroh Corporation

DIGEST:

1. Even where a solicitation requires a bidder to bid on all base and additive items, a bid which fails to include prices for some items should not be rejected if evaluation and award are not based upon the "no-bid" items.
2. Contracting agency may, before award, correct a bid price which was incorrectly announced and recorded by agency officials at bid opening without affecting the validity of an otherwise proper award.
3. Where a protester initially files a timely protest and later supplements it with new and independent grounds, the later-raised bases must independently satisfy the timeliness criteria. Therefore, new issues based on information in agency report filed more than 10 working days after receipt of report are untimely, and delay caused by protester's failure to properly address letter raising new issues does not affect untimeliness.

Stroh Corporation (Stroh) protests the award of a contract to Sweeney, Manning, Seivert Mechanical Contractors, Inc. (Sweeney), resulting from invitation for bids (IFB) No. 2017-N-ARS-82 issued by the Department of Agriculture.

The protest is denied in part and dismissed in part.

The IFB, issued on August 16, 1982, solicited a base bid, item 1, for demolition and construction and two additive bid items for additional demolition and construction work. Addendum No. 1 to the IFB, dated September 8, 1982, solicited a third additive bid item.

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On September 23, 1982, the four bids received were opened with the following results for the two low bidders:

	<u>Base Item 1</u>	<u>Additive Item 1</u>	<u>Additive Item 2</u>	<u>Additive Item 3</u>
Sweeney	\$1,230,000	\$245,000	\$7,500	No/Bid
Stroh	\$1,235,700	\$236,100	\$4,000	\$36,000

At bid opening, Sweeney's base bid was incorrectly announced and recorded as being \$1,200,000. On the following day, September 24, 1982, the Contract Specialist was notified that Sweeney's base bid was recorded wrong. The bid was checked and it was verified that it had been erroneously recorded. The correction was made and a note to the file was prepared explaining the error and corrections made to the abstract. On September 27, 1982, award was made to the low bidder, Sweeney, in the amount of \$1,237,500 for the base bid and additive item 2.

By letter dated September 24, 1982, addressed to the contracting officer, Stroh protested that "award can only be made to the lowest responsible bidder who complied with the 'Instruction to Bidder' and fulfilled his bid by bidding on all alternatives." In denying Stroh's protest, the contracting officer stated that proper award was made to Sweeney in accordance with the award criteria and that the bid schedule "made no statement requiring a bidder to bid on all items."

In its protest to our Office of the contracting officer's decision, Stroh again contends that Sweeney's bid should have been rejected due to Sweeney's failure to bid on the third additive item. Stroh's position is based on the first sentence under additive item 1, which, in relevant part, states that the bidder "shall state amount added to Base Bid 1 to perform demolition." Further, Stroh points out that clause 5(b) of standard form (SF) 22, included with the bidding documents, states in relevant part: "Where the bid form explicitly requires that the bidder bid on all items, failure to do so will disqualify the bid." The

contracting officer contends that protester's reference to clause 5(b) of SF 22 was quoted out of context because the following sentence of the clause states: "When submission of a price on all items is not required, bidders should insert the words 'no bid' in the space provided for any item on which no price is submitted." The contracting officer additionally comments that the word "shall" of the IFB in the clause "'Bidder shall state amount added to Base Bid 1 . . .'" * * * does not in any way mean that each bidder was required to bid on that item or on all items * * *."

When a bidder does not bid on certain additive or deductive items, the bidder runs the risk that its bid will be eliminated from consideration, but only if the evaluation process dictates acceptance of the items not bid. Mitchell Brothers General Contractors, B-192428, August 31, 1978, 78-2 CPD 163. Even if the IFB states that failure to bid on every item in the base bid and the additives will cause rejection of the bid, a bid which fails to include prices for some items should not be rejected if evaluation and award are not based upon the "no-bid" items. See 51 Comp. Gen. 792 (1972). Because additive item 3 was not included in the award, Sweeney's bid was properly accepted, notwithstanding Sweeney's failure to bid on additive item 3. See C.T. Bone, Inc., B-194436, September 12, 1979, 79-2 CPD 190; 51 Comp. Gen. 792 (1972).

Stroh's protest additionally alleges that the contracting officer and Sweeney "improperly and illegally raised said [Sweeney] bid to \$1,230,000 after the bidding, and after the bids were opened." Since the record indicates that the announcement and initial recording of Sweeney's base bid as being \$1,200,000 was an error, not reflecting the actual bid amount, corrected in the proper form before award, we view this as being a deviation of form and not substance, which does not affect the validity of an otherwise proper award. See A.A. Beiro Construction Company, Inc., B-192664, December 20, 1978, 78-2 CPD 425.

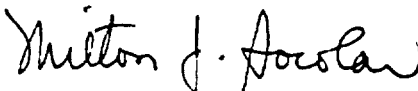
Based upon facts in the agency report, Stroh has raised additional points of protest in its comments to the report. Specifically, Stroh alleges that Sweeney failed to fill in the bid bond amount and failed to complete

the certification relating to the employment of handicapped workers. These new points of protest are untimely filed.

Where, as here, a protester initially files a timely protest and later supplements it with new and independent grounds, we have held that these later-raised bases must independently satisfy the timeliness criteria of our Bid Protest Procedures. Amray, Inc., B-205037, February 9, 1982, 82-1 CPD 116.

Stroh's comments on the agency report raising the new grounds of protest, dated November 24, 1982, and addressed to the contracting agency instead of our Office reached the GAO on December 13, 1982. While it is unclear as to the exact date that Stroh received the agency report (dated November 18, 1982), Stroh's comments, dated November 24, 1982, indicate that by then Stroh was aware of its new bases of protest. See GTE Telenet Communications Corporation, B-205729, September 7, 1982, 82-2 CPD 199. Our Bid Protest Procedures require that protests be filed with our Office within 10 working days of the time the protester becomes aware of the bases of the protest. 4 C.F.R. § 21.2(b)(2) (1982). Since Stroh's new points of protest were not received by GAO until December 13, 1982, more than 10 working days after November 24, 1982, these additional protest grounds are untimely. Delay caused by the protester's failure to properly address its protest does not merit consideration of an untimely protest under 4 C.F.R. § 21.2(c) (1982). Janitorial Services Industries, B-205234, November 20, 1981, 81-2 CPD 415.

The protest is denied in part and dismissed in part.

for 
Comptroller General
of the United States