

**DECISION**

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

**FILE:** B-211557

**DATE:** August 9, 1983

**MATTER OF:** Ebonex, Inc.

**DIGEST:**

1. Government properly rejected bid as nonresponsive where bidder left blank spaces designated for pricing material technical data requirements, the bid did not indicate the existence, nature, and amount of an alleged transposing error and other bidders' data prices show that price impact of data would affect relative standing of bidders.
2. The fact that the agency permitted the protester to clarify a nonresponsive bid submitted on a prior solicitation (because protester was the sole bidder) does not preclude the agency from rejecting a similarly nonresponsive bid on a subsequent solicitation.

Ebonex, Inc. (Ebonex), protests the rejection of its bid under invitation for bids (IFB) No. DAAB07-83-B-E027, for 50 Control Panel Assemblies and related technical data, issued by the Department of the Army, Materiel Development and Readiness Command. Ebonex's low bid was rejected as nonresponsive for failing to submit prices for subline items (SLIN's) 0004AA and 0005AA, relating to technical data. Ebonex contends that it did not intend to charge for the items and its omission of a zero was an inadvertent and minor error that did not render its bid nonresponsive.

The protest is denied.

The IFB required that bidders quote on all items. Ebonex submitted a price of \$1,831.69 each on SLIN's 0001AA and 0001AB (the 50 assemblies) and entered a zero on SLIN's 0002AA, 0003AA, 0005AB, and 0005AC. Ebonex's bid was rejected because it left SLIN's 0004AA and 0005AA (technical data) blank. The contract was awarded to Mil-Con

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Electronics Corporation (Mil-Con), which submitted a price of \$1,833 each on SLIN's 0001AA and 0001AB and "NSP" (not separately priced) on each of the remaining SLIN's.

Ebonex contends it made a clerical transposing error because SLIN's 0004AA and 0005AA are located on the back of a page. Ebonex argues that its bid should be corrected under the mistake in bid procedures set forth in Defense Acquisition Regulation (DAR) §§ 2-406.2 and 2-406.3 (1976 ed.).

In similar circumstances, where the bid form provides space for the bidder to indicate the price of an item and the bidder intends no charge, we have required the bidder to take some affirmative step--such as inserting a zero, the words "no charge," or dashes--to indicate that the bidder was aware of and willing to commit itself to furnish the goods and services covered by the item in question at no charge. American International Rent-A-Car, B-211326, April 22, 1983, 83-1 CPD 452. The rationale for this rule is, in part, that when a bidder fails to submit a price for an item, it generally cannot be required to perform the service covered by that item as part of other services for which prices are submitted. Honeywell, Incorporated, B-210000, April 22, 1983, 83-1 CPD 445; 52 Comp. Gen. 604 (1973). Moreover, to allow bidders to correct a price omission after an allegation of a mistake in bid, in effect, would give the bidder an impermissible option to explain after opening whether its intent was to perform or not perform the work. See Central Certificate Registry, Inc. et al., B-209089, March 28, 1983, 83-1 CPD 314.

We have recognized, however, a limited exception to this rule. Even though a bidder fails to submit a price for an item in a bid, that omission may be corrected if the bid, as submitted, indicates not only the possibility of error, but also the exact nature of the error and the amount involved. Farrell Construction Company, 57 Comp. Gen. 597 (1978), 78-2 CPD 45; Ainslie Corporation, B-190878, May 4, 1978, 78-1 CPD 340. This exception is based on the premise that where the bid itself establishes both the existence of the error and the bid actually intended, to hold that bid nonresponsive would be to convert an obvious clerical error of omission to a matter of responsiveness. Farrell Construction Company, supra; 52 Comp. Gen. 604, supra.

The exception does not apply here. While Ebonex argues that the prices for SLIN's 0004AA and 0005AA were included in its prices for SLIN's 0001AA and 0001AB, there is nothing in Ebonex's bid to indicate this. Accordingly, the Government cannot require Ebonex to perform SLIN's 0004AA and 0005AA, and the mistake in bid procedures cannot be utilized to make Ebonex's nonresponsive bid responsive. See Farrell Construction Company, supra; Bayshore Systems Corporation, 56 Comp. Gen. 83 (1976), 76-2 CPD 395.

Ebonex argues that the omission was trivial because it amounted to about 0.6 percent of the total prices of the seven (of 11) bidders which separately priced SLIN's 0004AA and 0005AA. Because the Government has asserted, and Ebonex does not refute, that the technical data requirements of the unpriced items are material, the bids submitted on the SLIN's by other bidders are irrelevant to the responsiveness of Ebonex's bid. In any event, the other bidders' pricing of those items shows the materiality of those items from a price standpoint in the circumstances. Those bidders submitted combined prices on SLIN's 0004AA and 0005AA that ranged from \$300 to \$2,000. Of the seven, the bid most similar to Ebonex's was an assembly price of \$1,835.91 each (only \$2.91 more than Ebonex's) and prices of \$300 for SLIN 0004AA and \$500 for SLIN 0005AA. It is clear that the addition of similar prices to Ebonex's bid would not be trivial because Ebonex's bid for the 50 assemblies was only \$65.50 lower than Mil-Con's bid of \$91,650 and any increase based on any of the other bidders' prices for Ebonex's unpriced items (\$300-\$2,000) would raise Ebonex's bid above Mil-Con's. In this regard, DAR § 2-405 (Defense Acquisition Circular 76-17, September 1, 1978) does not permit waiver or correction of even a minor informality if the relative standing of bidders would be affected. See Marino Construction Company, Inc., 61 Comp. Gen. 269 (1982), 82-1 CPD 167.

Ebonex's final argument is that it should be permitted to clarify its bid because it previously made a similar omission on a different IFB and this same procurement activity permitted clarification of its no cost intent and awarded the protester a contract. The Army contends that in that procurement, Ebonex was the only bidder and, therefore, could not have received an unfair advantage over other bidders, as it would in this case, citing 48 Comp. Gen. 801, 804 (1969) (bid not signed by sole bidder may be signed after bid opening). We consider Ebonex's argument to be irrelevant because even if the prior acceptance was under

factually similar circumstances, each procurement is a separate transaction and erroneous action taken on a prior solicitation does not have a binding effect on a procuring activity in a subsequent procurement. Kings Point Mfg. Co., Inc., B-204981, March 4, 1982, 82-1 CPD 196.

The protest is denied.

for *Milton J. Fowler*  
Comptroller General  
of the United States