

DECISION

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

26082

FILE: B-211870

DATE: August 23, 1983

MATTER OF: Werres Corporation

DIGEST:

1. Bidder's failure to return a page of the invitation for bids does not render the bid nonresponsive where the omitted page is incorporated into the bid by reference, thus resulting in a submittal in such a form that acceptance would create a valid and binding contract requiring the bidder to perform in accordance with all material terms and conditions of the IFB.
2. Bidder's failure to follow the pricing format of the IFB schedule does not render the bid nonresponsive where, as the result of an explanatory note added by the bidder to the schedule, all the elements of the bidder's price easily can be ascertained from the face of the bid.
3. Where an uninitialed erasure and correction leave no doubt as to the intended, corrected bid price, then a legally binding offer, acceptance of which would consummate a valid contract, is created at the offered price, and the requirement for initialing changes will be considered a matter of form which may be waived in the interest of the Government.
4. The offering of a bid acceptance period shorter than the 60-day period requested, but not required, in Standard Form 33 does not render the bid nonresponsive. Although the bidder cannot be allowed to extend the bid acceptance period, where other bidders offered the longer requested acceptance period, the bidder's active participation in a protest filed within the offered acceptance period tolls the running of the period until resolution of the protest.

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Werres Corporation protests the proposed award of a contract to the Conveyor Handling Company, Inc., by the Social Security Administration (SSA) under invitation for bids No. IFB-SSA-83-0154 for the provision and installation of a conveyor system and related protective barriers at SSA's Headquarters Supply Building in Baltimore, Maryland. Werres contends that, for a number of reasons, Conveyor's bid is nonresponsive. We deny the protest.

Ten bids had been received in response to the solicitation by the time of bid opening on May 17, 1983. Conveyor offered SSA 15 days in which to accept its apparent low bid of \$68,828. Werres offered SSA 60 days in which to accept its bid of \$78,375, the apparent second low bid. On May 20, Werres filed this protest with our Office, having also filed a protest with SSA. We discuss below, in the order in which they were raised by the protester, those aspects of Conveyor's bid which the protester asserts makes it nonresponsive.

In submitting its bid, Conveyor failed to return page 13 of the IFB, which contained most of the provisions concerning time of delivery. This page set forth the outer limits on the time allowed for performance or delivery, and provided a space for bidders to offer a delivery schedule earlier than that which would otherwise be required by the Government. Werres contends that this omission from the bid package rendered Conveyor's bid nonresponsive. In particular, Werres emphasizes the warning on page 13 that:

"Bids offering delivery of a quantity under such terms or conditions that delivery will not clearly fall within the applicable delivery period specified above will be considered nonresponsive and will be rejected."

Failure to return part of a bid package does not automatically render a bid nonresponsive. Rather, the general rule is that where a bidder fails to return with his bid all of the documents which were part of the invitation, the bid must be submitted in such a form that acceptance would create a valid and binding contract requiring the bidder to perform in accordance with all the material terms and conditions of the invitation. Accordingly, a bid will be considered responsive, despite the

omission of pages of the IFB, where the omitted pages are incorporated into the bid by reference to them in that part of the bid package returned to the contracting officer. Thus, where the face sheet of Standard Form 33 indicates that the solicitation comprised a certain number of pages, some of which are omitted, then the omitted pages would be considered incorporated into the bid by the reference to them on the face sheet which was returned with the bid. In addition, the bidder's return of a "Table of Contents" page listing all sections comprising the bidding document serves to incorporate all of those provisions into the bid. See International Signal & Control Corporation; Stewart-Warner Corporation, 55 Comp. Gen. 894 (1976), 76-1 CPD 180 and the cases cited therein. Since here the face sheet indicates that it was page 1 of 22 pages and Conveyor also returned the "Table of Contents" page of the solicitation, the omitted page 13 was incorporated by these references into the bid and the bid therefore was not rendered nonresponsive by the omission.

Conveyor's failure to propose a delivery schedule similarly did not render its bid nonresponsive. The solicitation specifically provided on page 13 for this contingency, stating that, "If the bidder offers no other delivery schedule, the delivery schedule stated above shall apply." Since Conveyor by its failure to propose an alternate delivery schedule thereby adopted the maximum delivery dates specified on page 13, its bid cannot be considered to have offered a delivery which was not "within" that schedule.

Werres next contends that Conveyor's failure to indicate its bid prices in the manner required by the solicitation rendered Conveyor's bid nonresponsive. The solicitation required bidders to indicate in the spaces provided in the bid form the price bid for the various elements or items in the overall operational conveyor system, including: "conveyor system" (Item E-1), the installation of the conveyor system (E-2), the materials for and installation of the protective barriers (E-3a and b), the electrical connection of the motors (E-4), the drawings required for approval of the system (E-5), and the drawings of the electrical wiring and the maintenance and operational manuals (E-6). SSA apparently intended Item E-1 to represent only the price for the conveyor mechanism itself and the prices bid for Items E-1 through E-6 to add up to the overall bid price. We think this could have

been more clearly expressed in the bid schedule. Conveyor understood SSA to be requiring bidders to indicate for E-1 the overall bid price with SSA merely requiring in Items E-2 through E-6 a partial allocation of the overall price to some of the components of the overall system. Accordingly, Conveyor submitted a price of \$68,828 for Item E-1, and submitted separate prices totaling \$26,460 for Items E-2 through E-6. Conveyor placed an asterisk beside Item E-1 and added the following note to the bottom of the bid schedule: "*E-1 PRICE IS FOR ENTIRE SYSTEM and INCLUDES ITEMS E-2, E-3, E-4, E-5 and E-6."(Emphasis in original.)

Conveyor's failure to submit a price only for the conveyor mechanism under Item E-1 does not render its bid nonresponsive. Although a bid is generally regarded as nonresponsive when it does not include a price on every item as required by the IFB, such an 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. Lyon Shipyard, B-208978, September 27, 1982, 82-2 CPD 287. The price intended for Item E-1 can be derived by subtracting the prices indicated for Items E-2 through E-6 from the price indicated for Item E-1, thus yielding a price of \$42,368 for the conveyor portion of the system. Therefore, the prices bid for the overall system and for its various component elements, as listed in the IFB, are obvious and readily ascertainable from the face of the bid. This is even admitted by the protester, who states that it " * * * acknowledge[s] that this deviation did not alter the amount bid, it simply represented yet another deviation from standard government forms and procedures." Since the omission of a separate price for the conveyor mechanism alone is merely a matter of form, an immaterial deviation from the exact requirements affecting neither the price, quantity nor quality, it thus can be waived or cured. See Jimmy's Appliance, 61 Comp. Gen. 444 (1982), 82-1 CPD 542; Lyon Shipyard, supra; Building Maintenance Corporation, B-190642, February 17, 1978, 78-1 CPD 143.

Werres then notes that the amount Conveyor originally had entered for Item E-1 had been obliterated with "white-out" and the new price of \$68,828 typed over. Werres argues that Conveyor's failure to initial the changed

price rendered its bid nonresponsive. The solicitation includes Standard Form 33-A, section 2(b) of which states that "Erasures or other changes must be initialed by the person signing the offer." Nevertheless, we have consistently held that if an uninitialed erasure and correction leave no doubt as to the intended price, there is a legally binding offer, acceptance of which would consummate a valid contract which the bidder would be obligated to perform at the offered price. Under such circumstances, the requirement for initialing changes is a matter of form which may be considered an informality and waived in the interest of the Government. See 49 Comp. Gen. 541 (1970); Durden & Fulton, Inc., B-192203, September 5, 1978, 78-2 CPD 172. In the former case cited, we pointed out that the uninitialed change to the bid price was made prior to the time sealed bids were opened, and that since bidders were responsible for the contents of their bids, acceptance of the bid would result in the bidder's legal obligation to perform. The same obviously is true here. Therefore, Conveyor's failure to initial the change properly may be waived as a minor informality.

Werres also contends that Conveyor technically qualified its bid by offering the Government only 15 days in which to accept its bid and that Conveyor cannot be allowed to extend its acceptance period since this would constitute a change in the bid after bid opening. Standard Form 33, included in the IFB, provides that, unless the bidder indicates a different period, a binding contract will result if the Government accepts the offer within 60 calendar days. We have previously held that this clause does not mandate a minimum acceptance period, but instead merely requests a 60-day acceptance period. A bidder can offer an acceptance period shorter than the one requested, but not mandated, and still be responsive to a solicitation. See Professional Materials Handling Co., Inc.--Reconsideration, 61 Comp. Gen. 423 (1982), 82-1 CPD 501.

However, as indicated by Werres, a bidder offering a bid acceptance period shorter than that requested cannot be allowed to extend that period, either before or after its expiration, where other bidders offered the longer requested acceptance period. A bidder offering less than the requested acceptance period has not assumed as great a risk of price or market fluctuations as have the firms

that offered the requested acceptance period, and to allow the former to decide whether it desires to extend its bid would be prejudicial to the latter. See Professional Materials Handling Co., Inc.--Reconsideration, supra.

Nevertheless, we do not believe that this rationale can be invoked to prevent award to Conveyor. We have held that this rationale does not prevent award to a bidder which filed a timely protest against award of the contract to another firm if the contract is awarded within the protester's bid acceptance period, as tolled by the duration of the protest. The bidder in such a case is not attempting to extend its bid acceptance period after minimizing its exposure by initially offering a shorter acceptance period, but instead does no more than seek to correct a perceived impropriety that caused its bid to be rejected rather than accepted within the offered acceptance period. See Professional Materials Handling, Co., Inc.-- Reconsideration, supra.

Similarly, we do not believe that this rationale should prevent award to a bidder which actively participates in a bid protest filed by another if the award is made within the intended awardee's offered bid acceptance period, as tolled by the duration of the protest. A potential awardee would still bear the risk that the contracting agency, in the absence of a protest, would be unable to make award within the potential awardee's shorter than requested bid acceptance period. Further, tolling the acceptance period during the duration of the protest in which the potential awardee actively participated prevents other bidders, foreseeing otherwise the likelihood of an award to the potential awardee, from frustrating this award, and thus circumventing the requirement of an award to the lowest, responsible, responsive bidder, by filing a frivolous protest and maintaining it until the potential awardee's acceptance period had expired. See Mission Van & Storage Company, Inc. and MAPAC, Inc., 53 Comp. Gen. 775 (1974), 74-1 CPD 195; Skyline Credit Corporation, B-209193, March 15, 1983, 83-1 CPD 257; S. J. Groves & Sons Company, B-207172, November 9, 1982, 82-2 CPD 423.

Conveyor has actively participated in this protest by submitting comments in opposition to Werres' contentions and has manifested an intention to remain eligible for award. Conveyor's bid acceptance period was therefore

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tolled for the duration of this protest. Since Conveyor offered a 15-day acceptance period, bids were opened May 17, and Werres filed a protest at least as early as May 20, then SSA may make award to Conveyor, if otherwise proper, for 12 days after SSA's receipt of notice of the resolution of Werres' protest.

The protest is denied.

Harry D. Jan Cleve
for Comptroller General
of the United States