

DECISION



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

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FILE: B-213401

DATE: April 24, 1984

MATTER OF: Fischer-White-Rankin Contractors, Inc.

DIGEST:

Where a bid is reasonably subject to more than one interpretation, only one of which makes the bid low, the bid should be rejected as ambiguous since other bidders would be prejudiced if the bid were accepted.

Fischer-White-Rankin Contractors, Inc. (Fischer) protests the award of a contract to Roberts Construction Company under invitation for bids (IFB) No. F05600-83-B-0055, issued by Lowry Air Force Base in Colorado, for an addition to and alteration of the Lowry commissary. Fischer essentially contends that the bid submitted by Roberts was ambiguous, and therefore should have been rejected.

We sustain the protest.

The solicitation, issued on August 1, 1983, contained a basic bid item and four additive line items. On August 13, amendment 0001 was issued, deleting the first additive line item and including it, instead, as part of the basic bid. A revised schedule, with the first additive line deleted, never was issued.

The solicitation specified that the award would be made in accordance with Defense Acquisition Regulation § 7-2003.28 (1976 ed.), which states:

"The low bidder for purposes of award shall be the conforming responsible bidder offering the low aggregate amount for the first or base bid item, plus or minus (in the order of priority listed in the schedule) those additive or deductive bid items providing the most features of the work within the funds determined by the Government to be available before the bids are opened"

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Three bids were received and opened on August 31, 1983. The two relevant bids were as follows:

| <u>Bidder</u> | <u>Basic</u> | <u>Item 1</u> | <u>Item 2</u> | <u>Item 3</u> | <u>Item 4</u> | <u>Total</u> |
|---------------|--------------|---------------|---------------|---------------|---------------|--------------|
| Roberts | \$3,749,900 | \$82,500 | \$35,000 | \$51,000 | \$26,000 | \$3,544,400 |
| Fischer | \$3,774,000 | N/A | \$31,000 | \$48,900 | \$21,000 | \$3,874,900 |

While the Air Force recorded Roberts' basic bid as \$3,749,900, the handwritten bid actually shows the figure 7 written over the figure 3 (in the hundred-thousand column); also, the total bid is the sum of the four additive items plus \$3,349,900. The Air Force determined, however, that Roberts meant to bid \$3,749,900 for the basic item, which was consistent with the basic bid the firm entered elsewhere on the schedule where it was asked to break the basic bid down to its elements for informational purposes, and that Roberts simply forgot to recalculate the total to reflect an apparent \$400,000 increase. In fact, Roberts confirmed the bid as \$3,749,900 after bid opening.

In view of the funding available, the bids were evaluated on the basis of the basic bid only. In evaluating Roberts' basic bid, the Air Force decided that since the firm acknowledged amendment 0001, it committed itself to perform what had been additive item 1 for the price bid for the basic work. The Air Force concluded that Roberts' entered price of \$82,500 for additive item 1 was included in the basic bid of \$3,749,900, and was entered on the bid schedule for informational purposes only.

Fischer essentially contends that Roberts' bid was ambiguous and should have been rejected. In addition to complaining about the Air Force's assumption that Roberts meant \$3,749,900 instead of \$3,349,900 for the basic bid, Fischer argues that, notwithstanding that Roberts acknowledged amendment 0001, by expressly pricing additive item 1 at \$82,500 and reflecting that figure in the total bid the basic bid was at best ambiguous as to whether it included a price for what had been additive item 1. Fischer thus suggests that Roberts' bid for the basic work, as amended, could reasonably be viewed as the sum of \$3,749,900 and \$82,500--\$3,832,400--in which case Fischer, at \$3,774,000, would be the low bidder.

Where a bid is subject to more than one reasonable interpretation, only one of which makes the bid low, the bid must be rejected, since it would be prejudicial to the other competitors to permit a bidder to

select and confirm the lower of the reasonable prices. Bill Strong Enterprises, Inc., B-200546, March 5, 1981, 81-1 CPD 173; Ed A. Wilson, Inc., B-188260, B-188322 August 2, 1977, 77-2 CPD 68. In the same respect, the overall harm to the system of competitive bidding outweighs the immediate advantage of permitting a contracting agency simply to select the interpretation of the bid that saves it money relative to the next low bid, merely because the bidder agrees with that selection. Bill Strong Enterprises, Inc., supra.

Roberts' bid was ambiguous and should not have been accepted, since the interpretation that renders the bid greater than Fischer's is at least as reasonable as the interpretation the Air Force adopted. While it may be reasonable to assume that because Roberts acknowledged amendment 0001 the firm intended the amount entered for the basic bid to encompass what had been the work reflected in additive item 1, the fact is that Roberts entered a separate price for additive item 1, and that price is included in the firm's total bid. Thus, it is entirely reasonable to assume that Roberts' bid for the basic item, as amended, was \$3,749,900 plus \$82,500, rather than that the latter figure already was included in the former and was entered on the bid form as informational only.

Moreover, the fact that Roberts acknowledged receipt of amendment 0001 does not, as the Air Force apparently believes, establish that the acceptance of the firm's bid of \$3,749,900, without input from the bidder, would legally obligate Roberts to do what had been additive item 1 work at no extra charge. While a bidder can obligate itself to the contents of some amendments merely by acknowledging their receipt--amendments changing certain specifications, for example--the bid still must clearly establish the price at which the obligation is to be assumed; otherwise, the government cannot know from the bid, as submitted, what it will have to pay. See 38 Comp. Gen. 372 (1958); Ventura Manufacturing Company, B-193258, March 21, 1979, 79-1 CPD 194; Vanbar, B-184800, December 10, 1975, 75-2 CPD 385.

The Air Force cites our decision in Herman H. Neumann Construction, 55 Comp. Gen. 168 (1975), 75-2 CPD 123, as precedent for us to deny the protest. That case involved essentially the same facts as here--Neumann

included a price for an additive item after acknowledging an amendment which deleted the additive item and included it, instead, in the basic bid--but we did not require rejection of the ambiguous bid. The key difference in the two cases, however, is that Neumann's bid was low even after adding the additive item to the basic bid, so that no bidders were prejudiced by the ambiguity.

Since Roberts' bid was subject to more than one reasonable interpretation, only one of which made its bid low, the bid should have been rejected. Fischer was the next low bidder, and there is no suggestion in the record that the firm is not a responsible business concern. We therefore recommend that Roberts' contract be terminated for the convenience of the government, if practicable in terms of termination costs and the government's interest in timely project completion, and that a new contract be awarded to Fischer. If termination is not practicable, we recommend that Fischer be reimbursed the costs of preparing its bid in response to the Air Force's solicitation. In this respect, an unsuccessful bidder is entitled to reimbursement for its bid preparation costs where the contracting agency acted in an arbitrary and capricious manner with respect to the claimant's bid, which we believe was the case here, and the bidder otherwise would have been awarded the contract. See Richard Hoffman Corporation, B-212775.3, April 9, 1984, 84-1 CPD ____.

Since this decision contains a recommendation that corrective action be taken, we are furnishing copies to the Senate Committees on Governmental Affairs and Appropriations and the House Committees on Appropriations and Government Operations in accordance with section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. § 720 (1982), which requires the submission of written statements by the agency with respect to our recommendation.

The protest is sustained.

Melton J. Arosow
Acting Comptroller General
of the United States