

DECISION

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

FILE: B-214556

DATE: May 3, 1964

MATTER OF: E. H. Morrill Company

DIGEST:

1. Mere acknowledgment of receipt of amendment that adds option work, the prices of which are to be evaluated for award, is not sufficient to constitute a bid for the additional work. Bid that does not include prices for the option work therefore is properly rejected as nonresponsive, even though the cost of the option work is less than 1 percent of the total contract price. Furthermore, bidder's subsequent offer to perform option work at no charge does not make bid responsive, since responsiveness must be determined at bid opening.
2. Claim for bid preparation costs is denied where there is no showing that government acted arbitrarily or capriciously in rejecting claimant's bid.

E. H. Morrill Company protests the rejection of its bid as nonresponsive under U.S. Army Corps of Engineers invitation for bids No. DACA05-84-B-0039, covering hazardous waste management at Vandenberg Air Force Base, California. Although acknowledging receipt of amendment 0003 to the IFB, Morrill's low bid was rejected because it did not contain prices for two options listed in amendment 0003 which were to be evaluated for award. After bid opening, but before award, Morrill notified the contracting officer that if the government exercised any or all of the options, it would perform the work at no additional charge. Morrill maintains that its failure to provide option prices is a minor informality and that it is entitled either to the award of the contract or to its bid preparation costs and anticipated profit.

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We summarily deny the protest.

Amendment 0003 included a new bidding schedule page on which new line items 2a. and 2b., representing the option tasks (removal and replacement of unstable soils below the limit of contract excavation), were included. Morrill, however, submitted its bid price on the original page, which contained no mention of optional requirements. While Morrill does not state why it used the old page or did not submit a price for the options, it argues that its failure to do so should be excused as a minor informality or irregularity under Defense Acquisition Regulation (DAR) § 2-405 (Defense Acquisition Circular 76-17, September 1, 1978), because the total cost of the option items is approximately \$4,000, or less than 1/10 of 1 percent of the overall contract price.

The IFB warned bidders "If any of the [IFB] Amendments furnished amended bid pages, the amended bid pages must be used in submitting your bid." (Emphasis in original.) In addition, the bidding schedule sheet included in amendment 0003 stated that:

[b]id evaluation will be by adding all non-option and option items on the bidding schedule to obtain a total estimated amount price. . . . Bids must be submitted on all individual items of this bidding schedule; otherwise, the bids for this bidding schedule will be considered nonresponsive and will be rejected.

Where, as here, a solicitation includes an explicit requirement that bidders insert prices for all items and warns that failure to do so may result in rejection of the bid, a bid which has such an omission generally must be rejected as nonresponsive. Pensacola Engraving Company, B-200712, February 27, 1981, 81-1 CPD 139. This rule is applicable to option items to be evaluated at the time of award, Lyon Shipyard, Inc., B-208978, September 27, 1982, 82-2 CPD 287, JBS, Inc., B-201207, March 18, 1981, 81-1 CPD 211, and reflects the legal principle that a bidder who has failed to submit a price for an item generally cannot be said to be obligated to provide that item. Goodway Graphics of Virginia, Inc., B-193193, April 3, 1979, 79-1 CPD 230.

Here, Morrill's bid does not permit the conclusion that Morrill committed itself to provide the work required by line item 2. Although Morrill acknowledged receipt of amendment 0003, which added the option requirement, the mere acknowledgment of amendment 0003 cannot be taken as sufficient to show that Morrill intended to furnish the option services without charge. 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. While a bidder can bind itself to the contents of some amendments merely by acknowledging receipt thereof, when a bidder does not insert a price for additional item quantities or for additional work added by an IFB amendment, doubt is created as to whether the bidder has bound itself to perform the additional work, and if so, at what price. The existence of this doubt requires rejection of the bid. Ventura Manufacturing Company, *supra*.

As for Morrill's minor informality assertion, where the IFB contains an explicit requirement that bidders insert prices for all items and warns that failure to do so could result in the bid's rejection, a bid omitting a price of even a trivial amount generally is to be rejected as nonresponsive. 51 Comp. Gen. 543 (1972); Goodway Graphics of Virginia, Inc., *supra*. This rule is predicated on the realization that when the government intends to obtain its total requirement from one source and is evaluating bids on the basis of prices for all items, the omission of a price for an item cannot be viewed as a minor informality which may be waived or corrected after bid opening because the government, on the basis of the bid as submitted, would be deprived of something it needs. Inherent in this realization is the fact that the need is a material one. For example, in Goodway Graphics we held that a bid which did not include a price for one item that was worth \$48 out of a total contract price exceeding \$141,000, but which item was "significant," was properly rejected as nonresponsive. Here, we think the need to have the contractor responsible for whatever additional excavation would be required if unstable soil were encountered is an important and material part of overall contract requirements. Therefore, we see no basis for considering Morrill's omission as a minor informality.

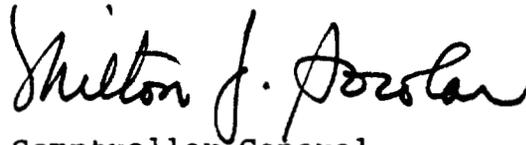
Finally, we point out that Morrill's post-opening offer to perform the option work at no charge does not make its bid responsive, since responsiveness must be determined at bid opening and a nonresponsive bid may not be corrected after that time. Brod-Dugan Company, B-212731, November 28, 1983, 83-2 CPD 619.

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As an alternative to award of the contract, Morrill has claimed "damages including but not limited to" its bid preparation costs and anticipated profit. Bid preparation costs can only be recovered if the government has acted arbitrarily or capriciously in rejecting a bid. In view of our conclusion that the Corps properly rejected Morrill's bid as nonresponsive, Morrill cannot prevail on its claim. See MIMCO, Inc., B-210647.2, December 27, 1983, 84-1 CPD 22. Moreover, we point out that there is no legal basis for allowing a protester to recover anticipated profit. M.L. McKay & Associates, Inc., B-208827, June 1, 1983, 83-1 CPD 587.

We have reached this decision on the basis of the protester's initial submission, which indicated, upon review, that the protest is without legal merit. Therefore, we have not requested a report from the Corps. See American International Rent-A-Car, B-211326, April 22, 1983, 83-1 CPD 452.

The protest is denied.



Acting Comptroller General
of the United States