

DECISION



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

31024

FILE: B-217251

DATE: April 19, 1985

MATTER OF: R.R. Gregory Corporation

DIGEST:

1. Protest alleging that competitor's low bid is ambiguous and should be rejected need not be filed before agency notification of intent to award to competitor since grounds for protest do not arise until the protester has learned of agency action or intended action adverse or inimical to the protester's interest.
2. Where bid contains a price discrepancy, bid may be accepted even though other bidders are displaced, since only one price reasonably could be regarded as having been intended bid.
3. A bidder's failure to initial changes in a bid is a matter of form that may be considered an informality and waived if the bid leaves no doubt as to the intended price. This rule also applies where changes in the bid are initialed but by someone other than the person who signed the bid.

R.R. Gregory Corporation (Gregory) protests the award of a contract to CWC Contractors, Inc. (CWC), under invitation for bids (IFB) No. GS-11B-48283, issued by the General Services Administration (GSA). Gregory contends that CWC's bid is ambiguous with respect to price and, therefore, should have been rejected.

We deny the protest.

Initially, CWC argues that, because Gregory's protest was not filed within 10 days after bid opening, it is untimely under section 21.2(b)(2) of our Bid Protest Procedures, 4 C.F.R. § 21.2 (1984), which requires that a protest be filed within 10 working days after the basis of protest is known or should have been known, whichever is earlier.

031835

However, timeliness is not measured from bid opening, as grounds for protest do not arise until the protester has learned of agency action or intended action which is inconsistent with what the protester believes to be correct or inimical to its interest. Werner-Herbison-Padgett, B-195956, Jan. 23, 1980, 80-1 C.P.D. ¶ 66. Thus, Gregory could have waited until after receiving agency notification of intent to award to CWC before protesting. Werner-Herbison-Padgett, B-195956, supra. Accordingly, we do not consider Gregory's protest filed prior to such notification untimely. See TM Systems, Inc., B-214543.2, Sept. 18, 1984, 84-2 C.P.D. ¶ 313.

Concerning the merits of the case, the IFB solicited bids for the construction of judges chambers at the United States District Courthouse, Washington, D.C. CWC submitted two bid forms in the same envelope. CWC's bid price on one of the forms as expressed in words and figures is \$384,087. On the other form, this price is crossed out and initialed and beneath it is written \$323,029 in words and figures. Gregory's bid price is \$339,300. Thus, CWC's status as low bidder is dependent on the use of the \$323,029 figure; if the \$384,087 price is used, Gregory becomes the low bidder.

GSA maintains that award to CWC was proper because the firm's bid is subject to only one reasonable interpretation, that is, that the firm intended to reduce its price to \$323,029. GSA points out that on both bid forms the higher price of \$384,087 can be clearly read; however, on one of the forms that price is crossed out and replaced by the amount of \$323,029 and the change is initialed. Under these circumstances, GSA states that, notwithstanding that the higher price was not crossed out on the other form, it would be illogical to read the bid as providing for the higher price because the lower price, written after the higher price had been deleted, is shown (in the form of a bid correction) as replacing CWC's initial higher price.

In this regard, CWC explains that, just minutes before depositing the CWC bid, CWC's representative at bid opening received instructions to reduce the firm's price to \$329,029. However, the representative overlooked the fact there were two bid forms in the same envelope and, after

correcting the price on only one form, deposited the bid with procuring officials.

Gregory responds that, since CWC submitted two bids with conflicting prices, it is impossible to determine from the bid documents alone which price was intended. Therefore, Gregory argues that the bid is ambiguous and should have been rejected. In the alternative, Gregory contends that in accordance with our decision in Action Mfg. Co., B-186195, July 23, 1976, 76-2 C.P.D. ¶ 73, CWC's bid should be evaluated on the basis of the higher price to avoid prejudice to other bidders.

We agree with GSA's determination since we believe it is clear that the bid price of \$323,029 is the only reasonable interpretation of the bid and that CWC's intent to be bound to this figure is clearly expressed in its bid. Here, we think that the fact that the higher price of \$384,087 was crossed out and the price of \$323,029 was inserted in its place and that the change was initialed clearly shows CWC's intention to revise the bid to the lower amount. Thus, we read the bid with the lower price as a modification to the higher priced bid. Cf. Domar Industries Co., Inc., B-202735, Sept. 4, 1981, 81-2 C.P.D. ¶ 199; B-161336, July 23, 1967. In our view, it is unreasonable to believe that, after changing the bid form by crossing out the original price and inserting a lower one, CWC intended the uncorrected price on the other form to control. In short, we think the only reasonable interpretation of this bid is that the lower price was submitted in place of the higher one. Cf. Frontier Contracting Co., Inc., B-214260.2, July 11, 1984, 84-2 C.P.D. ¶ 40.

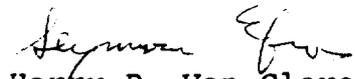
Further, while Gregory contends that, in accordance with our decision in Action Manufacturing Co., B-186195, supra, CWC's bid should have been evaluated on the basis of the higher price, we point out that, contrary to the situation here, in Action it was more reasonable to interpret the higher of two prices submitted for a particular item as the intended price because the lower price for that item was inserted under a bid provision which was inapplicable to the item solicited.

Finally, Gregory argues that the bid correction is ineffective because it was not initialed by the signer of the bid. In this regard, Gregory points out that the solicitation provided that changes appearing on the bid form must be initialed by the person signing the bid.

We have held that a bidder's failure to initial changes is a matter of form that may be considered an informality and waived if the bid leaves no doubt as to the price intended. Walsky Construction Co., B-213158, Nov. 21, 1983, 83-2 C.P.D. ¶ 603. This rule also applies where changes in the bid are initialed, but by someone other than the person who signed the bid. Walsky Construction Co., B-213158, supra. In such cases, where it is apparent that the changes were made before bids were opened, the bidder is responsible for the contents of its bid and may be required to perform at the prices as submitted. 49 Comp. Gen. 541 (1970); Walsky Construction Co., B-213158, supra. There is no requirement for the government to prove either the identity or the authority of the person who actually made or initialed the change.

Here, the handwritten changes on CWC's bid are clear and, as discussed above, leave no doubt as to CWC's intended price. In addition, there is no indication and the protester does not allege that the changes were made after bid opening. Accordingly, we see no reason for questioning the propriety of the award to CWC on this basis.

Protest denied.

for 
Harry R. Van Cleve
General Counsel