

DECISION

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

FILE: B-218228.3 **DATE:** December 30, 1985
MATTER OF: United Food Services

DIGEST:

Where a bid's consistent pricing pattern is discernible, GAO will allow correction of the omission of an option price for one item added by amendment in order to prevent an obvious clerical error of omission from being converted to a matter of responsiveness, since it is clear that the bidder intended to obligate itself to provide the item.

United Food Services, Inc. protests the award of a contract to Colbar, Inc. under invitation for bids (IFB) No. DABT23-85-B-0019, issued by the Department of the Army for full food and dining services at Fort Knox, Kentucky. The solicitation was for the base period from April 1 to September 30, 1985 with four 1-year options. The Army rejected United's bid as nonresponsive because the firm omitted option year prices for one of the three dining facilities that Amendment No. 2 added to the facilities originally listed in the IFB.

We sustain the protest.

The Army issued the solicitation on January 17, 1985 and received 10 bids at opening on February 26. When United, the third-low bidder, learned of its apparently inadvertent omission and the Army's proposed rejection of its bid, it requested permission to correct the bid. Because of problems encountered in the evaluation of bids, the Army extended the contract of the incumbent, Colbar, for 6 months beginning April 1. On August 20, the Army told United that it was rejecting its bid, rather than allowing correction. By this time, the two lowest bidders had withdrawn following mistake claims, and the Army had

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found not only United but also the fourth, fifth, and sixth-low bidders nonresponsive for various reasons. In United's case, the rejection was based on failure to provide option year prices for services in Building No. 1485, Group III, one of the dining facilities added by amendment. The Army awarded a contract to Colbar, the seventh-low bidder, on September 6, after determining that urgent and compelling circumstances necessitated this action.

The IFB, at section M-1, required bidders to include prices for each line item in the bid schedule and warned that failure to do so would result in rejection of the bid as nonresponsive. The IFB further provided that award would be made to the responsive, responsible bidder whose total price, including options, was low. Amendment No. 2 added three dining facilities to the 120 already on the bid schedule and provided a form for the bidder to fill in unit and extended prices for each year for each of the additional buildings. The amendment also revised the meal adjustment clause for all years.

United's bid was complete for the dining facilities listed in the original bid schedule. In addition, United acknowledged Amendment No. 2 and submitted prices for both base and option years for two of the additional buildings. However, it did so by interlineating each of the new line items on the original bid schedule, rather than using the separate form that the Army had provided with the amendment. United also revised the meal adjustment clause to reflect the amendment. However, with respect to the third additional building, No. 1485, Group III, United inserted a base year price only; it failed to interlineate either unit or extended prices for the 4 option years. United now offers to perform the option year services at either its intended price for the option years or at the price which it bid for the base period for the building in question. Alternatively, it offers to perform the contract at the original bid price, i.e., without charge for the option years for the building in question.

United argues that its omission is a mistake in bid, correctable as an obvious clerical error, and that both its mistake and its intended price are ascertainable from its pattern of pricing. United further asserts that even if the amount of the intended bid cannot be clearly proven for the purpose of bid correction, its mistake should be waived, since, if waived, its intended bid would be 11%, or \$7,219,163 lower than that of the awardee (\$62,921,598 as compared to \$70,140,761), and if corrected, its intended

bid would be 10.5 percent, or \$6,754,615 lower than that of the awardee (\$63,386,146 as compared to \$70,140,761).

Finally, United alleges that the award to Colbar violates applicable statutes and regulations, since the record does not show the required urgent and compelling circumstance which significantly affect the interest of the United States. The protester also requests bid preparation and protest prosecution costs.

As the Army points out, a bid generally must be rejected as nonresponsive if, as submitted, it does not include a price for every item requested by the IFB. Further, a nonresponsive bid may not be corrected under the mistake in bid procedures after bid opening. E.H. Morrill Co., 63 Comp. Gen. 348 (1984), 84-1 C.P.D. ¶ 508; 52 Comp. Gen. 604 (1973). This rule, which applies to option items if they are evaluated, 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. Id.; Goodway Graphics of Virginia, Inc., B-193193, Apr. 3, 1979, 79-1 CPD ¶ 230. A bidder's subsequent offer not to charge for the omitted item does not make the bid responsive. See Farrell Construction Co., 57 Comp. Gen. 597 (1978), 78-2 CPD ¶ 45.

Our Office, however, recognizes a limited exception under which a bidder may be permitted to correct an omitted price. This exception, which applies where the bid, as submitted, indicates the possibility of error, the exact nature of the error, and the intended bid price, is based on the premise that where there is a consistent pattern of pricing in the bid itself that establishes both the error and the intended price, to hold that bid nonresponsive would be to convert an obvious clerical error of omission to a matter of responsiveness. See 52 Comp. Gen. 604, supra, in which our Office permitted correction of an option price omission where the bidder had submitted identical prices for the base quantity and three of four option quantities.

We have not permitted bidders to insert an omitted option price where the option work was added by amendment to a solicitation that did not include options. E.H. Morrill Co., supra. Nor have we allowed correction where all option prices were omitted from the bid. Ainslie Corp., B-190878, May 4, 1978, 78-1 CPD ¶ 340. However, we have permitted bidders to insert an omitted line item or

option price where the bidder had bid on an identical item elsewhere in the IFB, Telex Communications, Inc. et al., B-212385 et al., Jan. 30, 1984, 84-1 CPD ¶ 127; where option prices were identical to the base prices for other items, International Signal and Control Corp. et al., B-192960, Dec. 14, 1978, 78-2 CPD ¶ 416; and where identical prices were inserted for the base period and the second option year, Con-Chen Enterprises, B-187795, Oct. 12, 1977, 77-2 CPD ¶ 284. In these cases, the evidence of error and the intent to bid on an omitted line item or an omitted option quantity were clear from the face of the bid, and a reasonable, clear bidding pattern could be established. Moreover, a pattern of pricing may be ascertained by comparing the base and option prices for certain line items and applying that pattern by analogy to different line items where a base price was inserted but option prices were omitted. Consolidated Technologies, Inc., B-205298, Apr. 23, 1982, 82-1 CPD ¶ 375.

Here, although United omitted option year prices for one of the dining facilities in Group III, our review of the firm's base and option year prices for buildings in that category shows a pattern of pricing. The firm's unit prices are identical for all 4 option years, and the increase in unit prices for these years over prices for the base year for all Group III buildings is between \$4 and \$8. United's base year unit price for Building No. 1485 was \$321. It therefore appears that its intended unit price for the option year would be between \$325 and \$329.

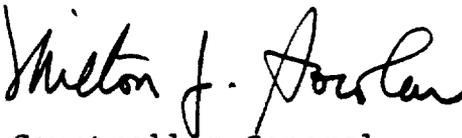
This analysis of the omission of the option price for Building No. 1485 establishes the existence and nature of United's error. While United's intended price cannot be precisely determined, it is within an extremely narrow range. Where it is clear that the intended bid would have been the lowest, even though the amount of the intended bid cannot be clearly proven for the purpose of bid correction, we have permitted an exception to the rule that a bidder is not free to waive a mistake claim after bid opening and to stand on its original bid price. Bruce Andersen Co., Inc., 61 Comp. Gen. 30 (1981), 81-2 C.P.D. ¶ 310. Whether the intended bid would have been the lowest may be ascertained by reference to reasonable estimates of omitted costs. Id.

Applying the rule so as to allow United to waive its mistake claim and stand on its original bid price results in a total evaluated price of \$62,921,598. The next-low responsive bid, that of the awardee, was \$70,140,761. Thus, as noted above, the awardee's bid is 11 percent, or \$7,219,163 more than United's bid.

Considering the difference of approximately \$7,000,000 between United's bid and the awardee's bid, we believe it is reasonable to assume that United would have been the lowest bidder if either a corrected bid or its original bid were allowed. United would have had to have bid \$5,000 per day per option year for Building No. 1485, Group III (in contrast to a base year unit price of \$321 per day for that building) in order to be upset as the lowest bidder. We believe it is unreasonable for the Army to conclude that United would have priced the 4 option years at a rate that much higher than the rate for the option years applied to the other buildings in Group III. Therefore, the rule that prevents an obvious clerical error of omission from being converted to a matter of responsiveness is applicable here, since United has otherwise acknowledged Amendment No. 2, and since it is clear that the firm intended to obligate itself to provide the services in question. We sustain the protest on this basis.

Accordingly, we are recommending that the Army terminate Colbar's contract and make award to United, allowing United to waive its mistake claim for the omitted option years for Building No. 1485, Group III. In view of this recommendation, we need not consider whether the Army should have extended Colbar's existing contract pending resolution of the protest or whether, as United contends, urgent and compelling circumstances did not exist, so that the Army improperly proceeded with award and approved performance of Colbar's new contract. Further, United is not entitled to bid preparation or protest prosecution costs. See 4 C.F.R. § 21.6(e) (1985).

We sustain the protest.

for 
Comptroller General
of the United States