



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Main Electric Ltd.

File: B-224026

Date: November 3, 1986

DIGEST

Low bid that failed to state a separate price for items added by an amendment properly was rejected as nonresponsive where the government's estimated cost of the added items is more than the difference between the two lowest bids. Even though award was on a lump-sum basis, the mere acknowledgment of the amendment without stating a price for the additional items created doubt as to the intended price of the items and whether the bidder obligated itself to provide those items.

DECISION

Main Electric Ltd. protests the rejection of its bid under invitation for bids (IFB) No. DAAC89-86-B-0124, issued by the Department of the Army, Tooele Army Depot, Utah. The IFB required the successful bidder to perform certain construction work at the Pueblo Depot Activity, Pueblo, Colorado. The Army determined that Main Electric's bid was nonresponsive because it failed to state a price for an item added to the original scope of work by an amendment, although the protester did acknowledge the amendment.

We deny the protest.

The IFB's bid schedule, as originally issued, included only item 0001AA that requested a unit price and extended prices to replace 150 electrical power poles, crossarms, and hardware. A separate space was provided for offering a total bid price. The Army subsequently issued an amendment stating that item 0001AB--to furnish and install 12 ground-operated air break switches--was to be added to the bid schedule.

Main Electric completed the original bid schedule by offering a unit price under item 0001AA of \$1,126.666 and offering an extended price and total bid price of \$169,000. The protester also acknowledged the amendment adding item 0001AB, but did not indicate a price for that item. The total bid price of \$169,000 was the lowest total bid price offered. The next lowest bidder, Union Power Construction Company, offered unit

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and extended prices of \$1,011.88 and \$151,782, respectively, for item 0001AA, and inserted a unit and extended prices of \$2,504.88 and \$30,058.56, respectively, for item 0001AB in the bid schedule. Union Power's total bid price was \$181,840.56.

Because Main Electric's bid did not separately price item 0001AB nor clearly indicate that a price for 0001AB was included in the total bid price, the Army regarded the bid to be unclear whether the bidder had obligated itself to perform item 0001AB at its offered total bid price. The Army therefore rejected Main Electric's bid as being nonresponsive, and awarded a contract to Union Power Construction Co.

The protester argues that since the basis for award was the total bid price, its failure to state a separate price for item 0001AB was immaterial. The protester further argues that there was no uncertainty regarding its obligation to perform the work included in item 0001AB since it had acknowledged the amendment adding the work to the IFB.

We disagree. The mere acknowledgment of an amendment increasing the quantity of items in a bid schedule is not sufficient to constitute a bid for the additional items at the price indicated in the original bid schedule. Where the bid does not include a price for the items added by the amendment, doubt exists as to the intended price of the additional items and whether the bidder has bound itself to provide those items. John Mondrick Plumbing & Heating, Inc., B-201675.3, July 31, 1981, 81-2 CPD ¶ 73; Ventura Mfg. Co., B-193258, Mar. 21, 1979, 79-1 CPD ¶ 194. Any bid that on its face fails to offer unequivocally to comply with all of the IFB's material terms at the offered price must be rejected as being nonresponsive. See Johnson Moving & Storage Co., B-221826, Mar. 19, 1986, 86-1 CPD ¶ 273.

The contracting agency, however, should waive the defect in the bid if the items added by the amendment are divisible from the original solicitation's requirements, are de minimis as to total cost, and clearly would not affect the competitive standing of bidders. See Leslie & Elliott Co., 64 Comp. Gen. 279 (1985), 85-1 CPD ¶ 212, aff'd, Ryan Elec. Co.--Request for Reconsideration, B-218246.2, Apr. 1, 1985, 85-1 CPD ¶ 366. In determining the cost significance of an amendment, we rely on the government's estimate, if possible. Leslie & Elliott Co., supra.

While it appears that the supply and installation of air switches added by the amendment were divisible from the solicitation's original requirements, adding the government's estimated cost of the switches--\$30,000--to the protester's

bid would cause its total bid price to exceed the next lowest price by more than \$17,000. The Army therefore properly did not waive the defect in Main Electric's bid.

The protester also complains that the Army failed to give it prompt notification of the award as required by Federal Acquisition Regulation, 48 C.F.R. § 14.408-1 (1985). Since the protester's bid properly was rejected, the protester was not prejudiced by any delay in notification. See J.E. Steigerwald Co., B-218536, Apr. 19, 1985, 85-1 CPD ¶ 453.

The protest is denied.

for *Seymour Efron*
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