



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Omni Elevator Company

File: B-241678

Date: February 25, 1991

Herlen Ernest Bess for the protester.
William E. Thomas, Jr., Esq., Department of Veterans
Affairs, for the agency.
Robert A. Spiegel, Esq., and James A. Spangenberg, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

1. A bidder's failure to initial changes is no more than a matter of form and a contracting officer may waive that delinquency as a minor informality where there is no doubt as to an intended bid price.
2. A bid may not be rejected as nonresponsive on an invitation for bids because of a discrepancy between unit prices and total line item prices, even though the bidder did not properly price the requested unit, where the ambiguity in pricing is subject to a single rational explanation that removes all doubt as to the intended bid price.
3. Agency's concern that the low bidder's pattern of pricing line items and options in its bid is inconsistent with the contract requirements does not relate to a matter of bid responsiveness, where the bidder has unequivocally committed to provide the exact thing called for in the invitation for bids by inserting prices for all line items and there is no doubt as to whether its bid will yield the lowest cost to the government, but rather these concerns relate to the bidder's understanding of and capability to perform the contract requirement, that is, its responsibility.

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DECISION

Omni Elevator Company protests the award of a contract by the Department of Veterans Affairs (VA) to any other bidder under invitation for bids (IFB) No. 539-04-91. The VA rejected Omni's bid as nonresponsive on account of the bidder's failure to initial some erasures in its bid. The protester contends that the agency should have waived this matter as a minor informality.

We sustain the protest.

The IFB solicited bids for elevator inspections and testing at several VA medical centers and a nursing home. The IFB requested unit and total prices for four line items. Each line item represented various specified elevator inspections and testing at one or more VA medical centers or nursing homes for one year. Unit and total prices were also requested for four line items, encompassing the same facilities, for two one-year option periods. The IFB schedule provided space for total yearly prices for the line items as well as a total price for the base year and all option years. All line items (including options) required at least semi-annual and annual inspections, along with various specified tests. For example, line item B of the IFB states:

"ITEM NO.	SERVICE	QUANTITY	UNIT	UNIT PRICE	TOTAL PRICE
B.	Provide semi-annual and annual elevator maintenance inspections, annual and semi-annual safety tests for the VA Medical Center, Chillicothe, Ohio	1	yr	\$ ____	\$ ____"

The other line items read similarly but are tailored to the particular semi-annual and annual inspections and tests required for those facilities for that year.

Three bids were received, and Omni was the apparent low bidder with a total bid price of \$38,476 for the base year and option years. The second and third low bids were \$69,936 and \$74,260, respectively. Omni's total base year price was \$11,236 and its option year prices were \$12,472 and \$14,768, respectively. Omni's unit prices were exactly one-half the total prices of each line item. Omni also obliterated with liquid correction fluid its initially inserted unit and total

line item prices for the second option year and inserted new prices.^{1/}

The contracting officer rejected Omni's bid as nonresponsive due to the bidder's failure to initial the alterations of its second year option line item prices, as required by Federal Acquisition Regulation (FAR) § 52.214-12(b). Omni protested the rejection of its bid to our Office on October 15.

A bidder's failure to initial changes is no more than a matter of form, and a contracting officer may waive that delinquency as a minor informality where there is no doubt as to an intended bid price. Hughes & Hughes/KLH Constr., 68 Comp. Gen. 194 (1989), 89-1 CPD ¶ 61; Werres Corp., B-211870, Aug. 23, 1983, 83-2 CPD ¶ 243. Since the original line item prices for the second option year in Omni's bid were completely obliterated and new prices inserted, there was no doubt, related to the uninitialed changes of these line item prices, as to Omni's intended bid price. Thus, the contracting officer was required to waive the failure to initial as a minor informality. Id.

In its protest report, VA asserts that certain other aspects of Omni's bid, unrelated to the price changes, created doubt as to Omni's intended bid price and justified rejecting Omni's bid as nonresponsive. For example, the VA claims that there were discrepancies between the bidder's unit and extended prices for certain line items, which created doubt in her mind as to the bidder's actual intended bid. In this regard, VA notes that because the unit designated in the IFB was "year" and the quantity "1," each line item encompassed an entire year's elevator inspection and test services, and the unit and total price for each line item should be the same. The contracting officer argues that there were at least two conflicting interpretations of Omni's bid in this case: \$38,476 (the aggregate of the extended prices) and \$19,238 (the aggregate of the unit prices). Omni responds that its intended bid was apparent from the consistent one-to-two ratio between unit prices and extended prices for semi-annual and annual inspections and safety tests.

The mere allegation that a bid is ambiguous does not make it so; an ambiguity only exists where two or more reasonable interpretations are possible. C.T. Bone, Inc., B-194436, Sept. 12, 1979, 79-2 CPD ¶ 190. Thus, an element of a writing in a bid may appear to be confusing and yet not constitute an ambiguity, where there is a single rational explanation, which removes all doubt on that point. Id.

^{1/} The initially inserted prices did not show through.

Notwithstanding the IFB designation of the units as "years," it is apparent from the face of the bid that Omni's intended unit price for each line item was for (1) the semi-annual inspections; and (2) annual inspections and tests. Since Omni's unit prices were consistently half of the total prices for the line items, there is no other possible interpretation of the bid. The total price for a line item is computed by doubling the unit price for that service. Omni's total price for each year is the sum total of the line items. Omni's total bid of \$38,476 is equal to the sum total of the prices for the base year and the 2 option years. Thus, we disagree with the conclusion reached by the contracting officer and find no ambiguity in Omni's bid price.^{2/}

In its report, VA also contends that Omni's bid is inconsistent with the contract requirements. For example, the scope of work for semi-annual inspections would appear to be significantly less than that for annual inspections and tests. Moreover, VA accurately notes that for many line items the semi-annual and annual inspections and tests are significantly different (more or less) among the base year and the option years, yet Omni's bid prices for all items simply increase 3 percent per year. As indicated by VA, the other two bidders considered these relative differences in preparing their line item bids. VA contends that Omni's peculiar bidding pattern, which was apparently not related to the actual contract requirements, caused the agency to have reasonable doubts about Omni's intended bid. Omni responds that its bidding pattern is consistent and all work can be accomplished as priced because of its company policies and structure.

The test for responsiveness is whether a bid offers to perform the exact thing called for in an IFB, so that acceptance of the bid will bind a bidder to perform in accordance with all of the terms and conditions of a solicitation without exception. OTKM Constr. Inc., 64 Comp. Gen. 830 (1985), 85-2 CPD ¶ 273. Omni's bid is responsive because it offered to perform as required by the IFB, through its act of entering a price for every requested item, and because there is no doubt as to whether Omni's bid will yield the lowest cost to the government. Id; Earthworks of Sumter, Inc., B-234594, May 30, 1989, 89-1 CPD ¶ 518. There is no question but that Omni's bid obligated it to perform each line item requirement in accordance with the IFB requirements. The concerns that VA

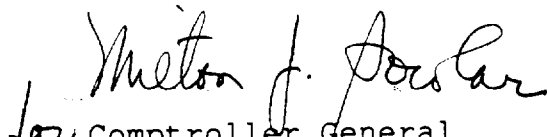
^{2/} Even assuming the bid could be interpreted as either \$19,238 or \$38,476, Omni's bid would be low in either case. A bid which is ambiguous as to price should not be rejected if it is low under all reasonable interpretations. NJS Development Corp., 67 Comp. Gen. 529 (1988), 88-2 CPD ¶ 62.

has expressed about Omni's bid prices relate to Omni's understanding of the requirements and capability to successfully perform the work, that is, Omni's responsibility, rather than Omni's unequivocal commitment to provide the exact thing called for in the IFB, that is, Omni's bid responsiveness. See Adrian Supply Co., B-239681, Aug. 28, 1990, 90-2 CPD ¶ 170. Thus, Omni's bid cannot be rejected as nonresponsive.

We sustain the protest.

We recommend that award be made to Omni if it is determined to be a responsible contractor.^{3/} Inasmuch as Omni is a small business concern, a negative determination of responsibility would be subject to the review of the Small Business Administration pursuant to Certificate of Competency procedures. FAR subpart 19.6. Since we sustain the protest, Omni is entitled to the costs of pursuing the protest. 4 C.F.R. § 21.6(d)(1) (1990).

The protest is sustained.


for Comptroller General
of the United States

^{3/} Omni does not claim that it made a mistake in its bid, despite its low bid price; on the contrary, Omni has confirmed its bid price.