



## Decision

**Matter of:** Childrey Contract Services, Inc.; Orkin  
Exterminating Company

**File:** B-258653; B-258653.2

**Date:** February 9, 1995

Luke Childrey, III, and Jerry Howard for Childrey Contract Services, Inc.; and Kenneth G. Menendez, Esq., for Orkin Exterminating Company, the protesters. David J. Rowland, Esq., and Cynthia S. Guill, Esq., Department of the Navy, for the agency. Susan K. McAuliffe, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Agency properly rejected as nonresponsive a bid that failed to provide required line item prices for option years where intended prices for those items were not clearly demonstrated on the face of the bid and solicitation required bidders to submit all such prices to be evaluated for award.
2. Since responsiveness must be determined from the face of the bid, a bidder's failure to acknowledge a material amendment (adding additional work requirements) to the solicitation renders bid nonresponsive where bid does not clearly demonstrate that bidder's price includes work added by amendment or otherwise indicate receipt of amendment and agreement to its terms.

### DECISION

Childrey Contract Services, Inc. and Orkin Exterminating Company protest the award of a contract to Pestmaster Services, Inc., under invitation for bids (IFB) No. N68931-94-D-8470, issued by the Department of the Navy for pest control services for three Naval installations in the Jacksonville, Florida area. Each protester challenges the agency's rejection of its bid as nonresponsive (for failure to include adequate pricing information, and failure to acknowledge a material solicitation amendment, respectively).

We deny the protests.

The IFB, issued on July 29, 1994, contemplated award of a combination firm, fixed-price/indefinite quantity contract for a base year with 4 option years. The IFB contained a bid schedule listing identical line items for the base and option years and provided that the bids would be evaluated for award by adding the total price for all the options to the total price for the basic requirement. Pursuant to Federal Acquisition Regulation (FAR) § 52.214-12, incorporated by reference into the IFB, bidders were required to enter the unit and extended prices for all line items; bidders were cautioned by the IFB that failure to price each item would be cause for rejection of the bid.

Three amendments to the solicitation were issued prior to the August 31 bid opening. Amendment No. 1 revised the bid schedule; amendment No. 2 provided corrections to the solicitation's stated requirements for inspection, review, and acceptance of the contractor's work, and amendment No. 3 revised contract performance requirements by, among other things, adding nine additional buildings to be serviced under the contract, increasing the number of historical service calls, and adding a requirement for algae control services.

Four bids were received by bid opening. The abstract of bids listed the following total prices (including all fixed-price and indefinite quantity requirements for the base and option periods) for the protesters and awardee:

Orkin:	\$4,012,961.90
Pestmaster:	\$4,090,610.79
Childrey:	\$4,564,768.00 <sup>1</sup>

Upon further review of the bids after bid opening, the agency rejected Childrey's bid as nonresponsive for failure to include required prices on its bid schedule for all of the stated line items for all of the option periods. Orkin's bid was found nonresponsive for failure to

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<sup>1</sup>The bid opening official initially calculated Childrey's total price by listing on the abstract of bids Childrey's stated total base year prices as its total prices for each of the option years. Childrey contends that it mistakenly provided an erroneous total bid price for the base year's fixed-price items (the protester contends that it incorrectly submitted its total base year price, including the indefinite quantity items, as its total price for the fixed-price requirements for the base year), and that the correct sum of its extended line item prices for the 5-year period is \$3,032,361, making it the low bidder. The agency does not address this request for correction since it concluded that Childrey's bid was nonresponsive.

acknowledge receipt of the solicitation's three amendments--the agency stresses the materiality of at least one of those amendments, amendment No. 3, in rejecting the bid. Award was made to Pestmaster on September 14. These protests followed.

#### CHILDREY'S PROTEST

Childrey's bid schedule provided unit and extended prices for each of the fixed-price and indefinite quantity items for the base year. (The protester's bid schedule contains an error in the extension of its first line item unit price. Also, the protester's total price for the fixed-price items for the base year appears to include the protester's stated extended prices for both the fixed-price and indefinite quantity items for the base year.) The line provided on the IFB's bid schedule for the bidder's total base year price was left blank in the protester's bid. For option year No. 1, the protester provided line item prices (identical to the firm's base year prices) for most of the fixed-price items listed in the bid schedule (the protester's bid schedule left blank the spaces provided for prices for the last four fixed-price line items). On the space provided for insertion of the firm's total price for the fixed-price items for the first option period, the protester inserted the following phrase: "price same as base year." For the total bid price for the first option period, the protester's bid stated "same as base year."

The protester submitted indefinite quantity line item prices (identical to its base year prices for those items) for each of the option years. No line item prices were submitted for any of the fixed-price items for the second, third, and fourth option years. For the second option period, the protester noted next to the bid schedule's space for the firm's total price for the fixed-price items, as well as next to the space for the total bid price for the second option period: "same as base year." No line item or total prices or notations of any kind (regarding base year or other prices) was included on the bid schedule for any of the fixed-price items for the third and fourth option years.

Childrey contends that the agency improperly rejected its bid for its bid schedule's omission of option year prices. The protester principally argues that, based upon the consistent pricing pattern in the firm's bid (allegedly established by the bid's notations for the first and second option year prices as being the same as its base year prices), the agency could clearly determine that the firm intended to provide all of the omitted option year line items at the same prices submitted by the protester for the base year. Childrey contends that if the mathematical inaccuracies in its base year bid are corrected, its base

year prices are applied to each of the option years, and the firm's extended line item prices are totaled over the 5-year period, the firm is the low responsive, responsible bidder entitled to award.

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. Burnside-Ott Aviation Training Center, Inc., B-228937, Nov. 6, 1987, 87-2 CPD ¶ 461; E. H. Morrill Co., 63 Comp. Gen. 348 (1984), 84-1 CPD ¶ 508. 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.*

Our Office, however, recognizes a limited exception under which a bidder may be permitted to correct a price omission. This exception, which permits correction 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. United Food Servs., 65 Comp. Gen. 167 (1985), 85-2 CPD ¶ 727.

Based upon the many omissions in Childrey's bid schedule, especially the firm's failure to provide any price information in its bid for the fixed-price items for both the third and fourth option periods, we believe the agency properly determined that Childrey's bid was nonresponsive. Although the protester states that its intention was to bid the same prices for the base and option years, but that the firm ran out of time before bid opening to write in its prices for all of the option years, we think the agency properly determined that the protester's bid itself did not clearly demonstrate a consistent pricing pattern to properly allow correction of the bid's many price omissions. The many price omissions in the bid made it impossible to determine with any degree of certainty from the face of the bid the actual intended prices for those items or whether the protester was actually agreeing to provide these items. As the agency points out, Childrey's bid failed to provide unit and extended prices for most of the bid schedule's line items over the 5-year period.

Although the protester noted on its bid schedule that it intended its prices for the first and second option years to be the same as its base year prices, Childrey's bid schedule included no similar notation regarding its third and fourth

option year fixed-prices. The omitted prices for the last 2 option years here are material omissions, especially since, as at least one other bid submitted under the IFB shows, prices for latter option years can reasonably be expected to be priced higher than earlier years due to the possibility of rising costs of labor and supplies--the protester's omissions can thus equally reasonably be viewed as an intention to provide different prices from those provided for the earlier years. Further, the extent of the omissions also raises questions as to whether the protester actually agreed to provide the omitted items and thus, whether the bid could form the basis of an enforceable contract. See GTA Containers, Inc., B-249327, Nov. 3, 1992, 92-2 CPD ¶ 321. Accordingly, we do not believe that Childrey's bid contains sufficient evidence of a bidding pattern for all of the option quantities to invoke the very limited exception to the rule requiring bids on all necessary items. The agency reasonably determined that the firm's bid failed to present an unequivocal offer to provide all the items required in the IFB and properly rejected the bid as nonresponsive.

Childrey's protest is denied.<sup>2</sup>

#### ORKIN'S PROTEST

Orkin protests the Navy's rejection of its bid as nonresponsive for failure to acknowledge receipt of the amendments to the solicitation. Orkin principally challenges the agency's determination that the protester did not acknowledge receipt of amendment No. 3, which the agency considers a material amendment to the IFB due to the addition of performance requirements contained in that amendment. The protester contends that its failure to formally acknowledge its receipt of amendment No. 3 should

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<sup>2</sup>Childrey also protests the award on the basis that the awardee allegedly does not have requisite licenses to perform the contract. The awardee's compliance with the solicitation's general licensing requirements involves the agency's affirmative determination of the bidder's responsibility--a matter our Office will not review absent a showing of fraud or bad faith on the part of procurement officials, or that definitive responsibility criteria in the solicitation may have been misapplied. 4 C.F.R. § 21.3(m)(5) (1994); King-Fisher Co., B-236687.2, Feb. 12, 1990, 90-1 CPD ¶ 177. Where, as here, there is no such showing, we have no basis to review the protest.

be waived as a minor informality, pursuant to FAR § 14.405(d)(1)<sup>3</sup>, because its bid price included the work added by that amendment--the protester contends its bid therefore constructively acknowledged the protester's receipt of the amendment.

As a general rule, a bidder's failure to acknowledge a material amendment renders the bid nonresponsive, thus requiring that the agency reject the bid. This rule is premised upon two facts. First, that acceptance of a bid when an amendment has not been acknowledged affords the bidder the opportunity to decide, after bid opening, whether to furnish extraneous evidence showing that it had considered the amendment in formulating its price or to avoid award by remaining silent. Second, if such a bid were accepted, the bidder would not be legally bound to perform in accordance with the terms of the amendment, and the government would bear the risk that performance would not meet its needs. C Constr. Co., Inc., 67 Comp. Gen. 107, (1987), 87-2 CPD ¶ 534.

An amendment may be constructively acknowledged, however, where the bid itself includes one of the essential items appearing only in the amendment. Thus, we have found that a bidder's failure to acknowledge an amendment could be waived when, for example, the bid clearly showed that it included a price for an item that was added by the amendment, 34 Comp. Gen. 581 (1955), or a price for quantities reduced by an amendment. Nuclear Research Corp.; Ridgeway Elecs., Inc., B-200793; B-200793.2, June 2, 1981, 81-1 CPD ¶ 437. We also have found constructive acknowledgment when the bidder agreed to use materials other than those required by the original solicitation, W.A. Apple Mfg., Inc., B-183791, Sept. 23, 1975, 75-2 CPD ¶ 170, aff'd, Mar. 2, 1976, 76-1 CPD ¶ 143, or when the bid included an acceptance period that was different from that imposed by the original solicitation. Shelby-Skipwith, Inc., B-193676, May 11, 1979, 79-1 CPD ¶ 336.

These decisions, in our opinion, are consistent with the regulatory provision that permits a bidder's failure to acknowledge an amendment to be waived as a minor informality or irregularity if the bid "clearly indicates that the bidder received the amendment." FAR § 14.405(d)(1); C Constr. Co., Inc., supra. In permitting constructive

<sup>3</sup>FAR § 14.405(d)(1) provides, in pertinent part, that the failure to acknowledge a solicitation amendment may be waived as a minor informality where: "[t]he bid received clearly indicates that the bidder received the amendment, such as where the amendment added another item to the [IFB] and the bidder submitted a bid on the item."

acknowledgment, only the bidder's failure to acknowledge the amendment is waived, not the bidder's compliance with the amended solicitation. Id.

Here, the bid schedule did not provide separate line items for the additional performance requirements of amendment No. 3 and, although the protester states that it considered the amendment in calculating its price, the bid submitted by Orkin does not clearly show that its price includes the work requirements added by that amendment (i.e., the addition of nine buildings to be serviced under the contract, the increase in service calls or the addition of algae control services). The agency's estimate of the additional cost of the services for the nine buildings required by amendment No. 3 for the 5-year period (\$67,676.60) is relatively close to the difference in price (\$77,648.80) between Orkin's bid and the awardee's bid which had properly acknowledged receipt of the amendment; this price difference, we believe, also reasonably alerted the agency to the possibility that the protester's bid failed to include the additional work. Orkin's bid, on its face, does not reasonably indicate that it received any of the amendments--none of the three amendments were formally acknowledged by the firm, and the firm submitted its prices on the bid schedule provided in the original solicitation, not the revised bid schedule included in amendment No. 1.

In our opinion, it is axiomatic that the responsiveness of a bid must be determined from the face of the bid at bid opening--the bid must evidence on its face an intent to be bound by the terms of an amendment. Although the protester states that it considered the additional work stated in amendment No. 3 in pricing its bid, there is no clear demonstration in the bid of any price for the amendment's added performance requirements; the protester's post-bid-opening statement that it considered the amendment is not sufficient to show that the bidder agreed to comply with the terms of the amendment. While the bidder might have been aware of the existence of the amendment, since the bid itself does not clearly establish either receipt of the amendment, or an intent to be bound by its terms, the agency properly determined that the bid was nonresponsive. Accordingly, the protest is denied.

\s\ Ronald Berger  
for Robert P. Murphy  
General Counsel