

DECISION

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

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FILE: B-209707

DATE: April 22, 1983

MATTER OF: JEM Development Corporation

DIGEST:

1. Protester's bid should not have been rejected as nonresponsive because of the protester's failure to use the revised Bidding Schedule included as part of amendment No. 0001. Since the protester expressly acknowledged amendment No. 0001, it is legally bound to perform, without exception, the exact thing called for by the amended invitation.
2. A low responsive bid may be reduced after bid opening since this does not affect the relative standing of the bidders. Therefore, the protester's bid may be reduced by the amount bid for an item deleted under the revised Bidding Schedule.

JEM Development Corporation (JEM) protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. DACW43-82-B-0066 issued by the St. Louis District, United States Army Corps of Engineers (Army).

We sustain the protest.

The IFB solicited bids for the construction of a comfort station at Wappapello Lake, Wayne County, Missouri. The Bidding Schedule (schedule) contained 17 separate items and instructed bidders that they were required to bid on all items. Prior to bid opening, the Army issued amendment No. 0001 which changed a number of the specifications and revised the schedule. The amended schedule now had 18 separate items instead of 17. Original item No. 12 (pumping out and filling of existing septic tanks) had been deleted and a new item No. 16 (installation of precast concrete wheel bumpers in the parking area) and a new item No. 17 (removal and relocation of guardrail) had been added. Original item No. 17 (exterior electrical work) was now

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designated item No. 18 and, instead of requiring a unit price and an extended price for 300 square yards, the amended schedule now required the bidders to offer a price for "1 job."

At bid opening, the contracting officer found that JEM had acknowledged amendment No. 0001 and offered the lowest price; however, the contracting officer also discovered that JEM had submitted its bid on the original 17 item schedule and not the revised 18 item schedule. The contracting officer concluded that JEM's failure to use the revised schedule rendered its bid nonresponsive. In making this determination, the contracting officer noted that amendment No. 0001 had made significant changes in both descriptions and quantities. In the contracting officer's opinion, JEM's failure to use the revised schedule meant that JEM was not legally bound to furnish the Army the specific items solicited and that to allow JEM to change its bid after bid opening to conform with the revised schedule would be prejudicial to the other bidders.

In its protest JEM concedes that it used the wrong schedule, but argues, in effect, that its failure to use the revised schedule is insignificant. It points out that the elimination of original item No. 12, in fact, results in a \$1,500 reduction in its already low bid price. Moreover, in JEM's opinion, items Nos. 15, 16 and 17 of the revised schedule are nothing more than an item by item break out of original item No. 16 (asphalt paving). According to JEM, its bid price for original item No. 16 encompasses all the work required under new item Nos. 15, 16 and 17. Based on these arguments, JEM concludes that acceptance of its low bid presents no danger to the integrity of the competitive bidding systems and, in fact, is in the best interests of the Government since its bid is almost \$7,000 lower than the next low bid.

In rebuttal, the Army argues that JEM's bid is not an unequivocal offer to perform the exact thing called for in the invitation and, therefore, cannot be considered to bind JEM to perform in strict accordance with the IFB's specifications. According to the Army, JEM is trying to argue that its failure to use the revised schedule was a minor informality which can be waived. In the Army's opinion, however, JEM's failure to use the revised schedule was a material deviation affecting price, quantity and quality. The Army concludes, therefore, that JEM's failure to use the revised

schedule cannot be waived and that the contracting officer properly rejected JEM's bid as nonresponsive.

We do not agree. The test to be applied in determining the responsiveness of a bid is "whether the bid as submitted is an offer to perform, without exception, the exact thing called for in the invitation, and upon acceptance will bind the contractor to perform in accordance with all the terms and conditions thereof." 49 Comp. Gen. 553, 556 (1970). Failure to meet this standard requires rejection of the bid. See, for example, Redeye Enterprises; Standard Equipment Company, B-204814, B-204814.2, March 25, 1982, 82-1 CPD 283.

Since JEM has acknowledged amendment No. 0001, in our opinion, it is legally bound to perform, without exception, the exact thing called for by the amended invitation, even though its bid was submitted on the old schedule. In other words, amendment No. 0001 contained all substantive changes to the IFB. By acknowledging that amendment, JEM is committed to meet all the Army's requirements. Since original item No. 12 has been deleted, JEM's bid price can be reduced by the \$1,500 it bid for that item. We have held that a low responsive bid may be reduced after bid opening without prejudice to the other bidders since the reduction does not affect their relative standing. P&N Construction Company, Inc., 56 Comp. Gen. 328 (1977); 77-1 CPD 88. As to the other changes in the revised schedule, we agree with JEM that they have no material impact on the project's requirements since both the wheel bumpers and guardrail removal were part of the specifications of original item 16 "asphalt paving." JEM is obligated to meet all specifications at the total price bid minus the \$1,500 bid for original item No. 12. We recommend, therefore, that the award be made to JEM.

By separate letter of today, we are notifying the Secretary of the Army of our recommendation.

Protest sustained.

for Harry R. Van Cleave
Comptroller General
of the United States