

DECISION

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

FILE: B-215252

DATE: October 2, 1984

MATTER OF: Master Housekeepers Corporation

DIGEST:

Bid for custodial services properly was rejected as nonresponsive where by leaving subitem blank on solicitation schedule the bidder failed to commit itself to a pre-determined equitable adjustment factor to be used in the event the time of performance of certain cleaning tasks was changed from nights to days, or vice versa, which from experience the agency reasonably anticipated could occur and for which the agency had paid a substantial sum under the prior year's contract.

Master Housekeepers Corporation protests the rejection of its bid under invitation for bids (IFB) No. DAAE07-84-B-Q003, issued by the U.S. Army Tank-Automotive Command for custodial services at the U.S. Army Detroit Arsenal. Master's low bid was rejected as nonresponsive for leaving blank the unit and extended prices for a subitem. Master essentially contends that it did not intend to charge for that subitem and its omission of a zero or some other indication of "no charge" was a minor mathematical error that did not render its bid nonresponsive.

We deny the protest.

The IFB schedule consisted of a single item, No. 0001, which included all the labor, material, and equipment needed to perform the custodial service at the arsenal for 1 year. Bidders were instructed that their price for item No. 0001 must be the total for all the individual sub-items in the schedule, which were designated AA through BS. Subitems AA through AZ and BA through BR listed the custodial work to be performed. Subitem BS--the subject of this protest--represented an evaluation factor for "Changing Time of Performance."

There is no question but that a bidder's price for item No. 0001 was to be the total of all the individual subitems, including subitem BS. The principal issue in this protest is whether Master's failure to enter any notation of any kind as a unit or extended price for subitem BS rendered its bid nonresponsive.

Master had been the incumbent contractor for these services. The agency found it necessary at various times during the term of that contract to change the time of performance of certain tasks from nights to days. The time of cleaning almost 39,000 square feet was changed in this fashion, which was not anticipated when the contract was awarded, and for which the agency paid some \$40,000 as an equitable adjustment in the contract price.

Based upon this experience, the agency projected that during the term of the present contract, work relating to some 40,000 square feet would be changed from nights to days and that these changes would affect 180 days of the contract term. No one has disputed the reasonableness of these projections. In order to ease the administrative burden of negotiating equitable adjustments in the contract price on a case-by-case basis as these changes occur, and, in the contracting officer's words, "more importantly . . . [to bring] the adjustments, which are certain to come, within the realm of competitive determination," the agency added subitem BS to the schedule. Through it, the agency states, it is "acquiring" a pre-determined equitable adjustment in the form of a unit price per square foot per day for prospective changes in the time of performance of these services. Accordingly, subitem BS provides, in part, as follows:

"Contractor shall provide, in the blanks below, a unit price and extended amount (extended amount is for evaluation purposes) for the increase in COST PER SQUARE FOOT PER [CALENDAR] DAY for changing the time of performance for any given area from nights to days for all tasks except carpet shampoo, strip and rewax, and tasks to be performed every twelve (12) months.

"The Contracting Officer shall issue unilateral change orders when necessary to make such changes. If a change order is issued, the total amount of the adjustment in the contract price shall be the unit price

multiplied by the number of [calendar] days remaining in the period of performance multiplied by the number of square feet affected. "The unit price provided shall also be used for the decrease in COST PER SQUARE FOOT PER [CALENDAR] DAY for changing the time of performance for any given area from days to nights for all tasks except carpet shampoo, strip and rewax and tasks to be performed every twelve (12) months.

"For purposes of evaluation, the following figures shall be utilized:

40,000 SQ FT (Area changed from Nights
to days)
180 days (Time remaining in the period
of performance)

"Evaluated Amount:	UNIT PRICE	EXTENDED AMOUNT
40,000 SF X 180 days X (\$ _____)	=	(\$ _____)

"The unit price per square foot per day bid as the predetermined equitable adjustment factor regarding changes in the time of performance for any given area from nights to days, and vice versa, shall not be automatically applicable to square footage affected by such changes beyond a cumulative total of 40,000 square feet."

Master did not fill in the blanks in subitem BS and consequently its bid was rejected as nonresponsive. The contract was awarded to Mighty Maid, Inc., the low responsive, responsible bidder. Under subitem BS, Mighty Maid's bid shows a unit price of \$0.0001, and adjacent to the blank for "Extended Amount" the figure 720.00 and the initials of the person signing the bid. The amount of \$720 is the correct extension of the evaluation formula.

Master contends that it did not intend to include any charge for subitem BS. It states that its price for subitems AA through BS equals its total bid price on item No. 0001 and, as specified in the solicitation, that price covers all of the individual subitems. It states that due to a "minor mathematical error" it simply failed to enter a zero for subitem BS as intended. It further argues that

since Mighty Maid submitted a unit price of only \$0.0001 for subitem BS, it should not have been surprising to the agency that a bidder would not intend to charge anything for this subitem.

Generally, where the bid form provides space for the bidder to indicate the price of an item and the bidder intends no charge, we have required the bidder to take some affirmative step--such as inserting a zero, the words "no charge," or dashes--to indicate that the bidder was aware of and willing to commit itself to furnish the goods and services covered by the item in question at no charge, and if the bidder fails to include a price or take such an affirmative step for every item its bid is regarded as nonresponsive. Ebonex, Inc., B-211557, Aug. 9, 1983, 83-2 CPD ¶ 192; Photowatt International, Inc., B-208111, July 26, 1982, 82-2 CPD ¶ 79. The rationale for this rule is, in part, that when a bidder fails to submit a price for an item, it generally cannot be required to perform the service represented by the missing price. Brutoco Engineering & Construction, Inc., 62 Comp. Gen. 111 (1983), 83-1 CPD ¶ 9. Moreover, to allow bidders to correct a price omission after an allegation of a mistake in bid, in effect, would give the bidder an impermissible option to explain after opening whether its intent was to perform or not to perform the work for which the price was omitted. See Central Certificate Registry, Inc., et al., B-209089, et al., March 28, 1983, 83-1 CPD ¶ 314.

We have recognized, however, a limited exception to this rule. Even though a bidder fails to submit a price for an item in a bid, that omission may be corrected if the bid, as submitted, indicates not only the possibility of error, but also the exact nature of the error and the amount involved. Under this exception, we have permitted bidders to insert an omitted price where the IFB contains bidding schedules for similar items and the bidder has bid consistently on the same item elsewhere in the IFB. Telex Communications, Inc., et al., B-212385, et al., Jan. 30, 1984, 84-1 CPD ¶ 127. This exception is based on the premise that where the bid itself establishes both the existence of the error and the bid actually intended, to hold that bid nonresponsive would be to convert an obvious clerical error of omission to a matter of responsiveness. Farrell Construction Company, 57 Comp. Gen. 597 (1978), 78-2 CPD ¶ 45.

The exception does not apply here. It is not clear from Master's bid that Master would permit the times of

performance to be changed from nights to days at no charge. There are no other subitems in the solicitation similar to this one and therefore there is no pricing pattern to which to refer. Furthermore, although the total price bid by Master on item No. 0001 may, as the firm asserts, reflect the firm's intention to bid zero on subitem BS, it may, just as logically, reflect the fact that the firm intended to insert another figure for the item and then overlook its failure to do so when totaling its charges. To allow Master to explain after bid opening that it did not intend to charge for this subitem would be tantamount to allowing it to submit a new, revised bid.

Moreover, subitem BS is a material requirement. This subitem as bid by Mighty Maid constitutes less than 1 percent of the contract price, but we have held that even though the amount involved may be an insignificant percentage of the contract price, it is not a minor informality where the requirement was important enough to be specified in extensive detail. Farrell Construction Company, supra; General Engineering and Machine Works, Inc., B-190379, Jan. 5, 1978, 78-1 CPD ¶ 9. Here, the IFB devoted a full page to describing the equitable adjustment mechanism contained within subitem BS, called for the entry of a price and gave express notice that this subitem would be included in the evaluation of bids. Moreover, we have recognized that a requirement for a predetermined equitable adjustment factor such as this is a material one. See Thomas Construction Co., Inc., B-184810, Oct. 21, 1975, 75-2 CPD ¶ 248. Master's failure to indicate an amount in subitem BS defeated the very purpose of that provision.

There are other reasons, Master argues, why it should be permitted to clarify its bid: (1) previous contracts with the General Services Administration (GSA) included items left blank yet these contracts were considered to be valid with the blanks being interpreted as zeros; (2) the contracting activity here has permitted the adjustment of mathematical errors in previous bids without disturbing the award; and (3) the rejection of Master's bid is inconsistent with the treatment of Mighty Maid, which was allowed to "change" its bid after bid opening. Master maintains that Mighty Maid's bid did not include an entry for the extended amount for subitem BS which should have resulted in the rejection of Mighty Maid's bid. We do not believe any of these contentions provides a basis for accepting Master's bid.

We have reviewed the correspondence furnished by the protester concerning its prior GSA contract and do not understand GSA to have said that an item left blank in a solicitation schedule may be interpreted as a bid of "zero." Even if the GSA contract involved circumstances similar to this case and the agency acted improperly, each procurement is a separate transaction and erroneous action taken on a prior solicitation does not have a binding effect on a procuring activity under a subsequent procurement. Ebonex, Inc., supra; Kings Point Mfg. Co., Inc., B-204981, March 4, 1982, 82-1 CPD ¶ 196.

Since Master has not provided us with any factual details of those prior occasions when the procuring activity has permitted the correction of mathematical errors in bids, we have no basis to comment on their relevance to this case.

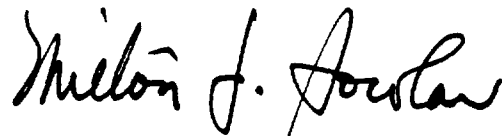
The record does show that Mighty Maid was permitted to correct a number of errors in its bid prior to award. To the extent that the protester in suggesting that these errors should have precluded an award to Mighty Maid, its protest would appear to be untimely. The protester was advised of the award to Mighty Maid on March 22, 1984, yet did not question the propriety of the correction of errors in Mighty Maid's bid until July 9--3-1/2 months later--when it filed with our Office its comments in response to the agency's report. Our bid protest procedures, however, require protests to be filed within 10 working days of when the basis for protest is known or should have been known, whichever is earlier, 4 C.F.R § 21.2(b)(2) (1984).

In any case, with respect to the corrections made by Mighty Maid in its bid, we have stated that where it is clear from the bid itself what price was actually intended, or where on the basis of logic and/or experience, it can be determined that one price made sense while the other does not, correction of a bid is allowed. Marine Ways Corporation, B-211788, Aug. 29, 1983, 83-2 CPD ¶ 271. The changes Mighty Maid made to its bid involved corrections of the addition of the total for some subitems or of the multiplication of the unit price and the quantity for some services and the corresponding addition within the relevant subitem. The addition errors were obvious from the face of the bid and by adding the price for each service within the subitem, it is clear what price was actually intended.

With regard to the corrections involving multiplication, the estimated quantity was provided in the solicitation and therefore the question is whether the errors were in the unit price or the extended price. For example, one service was the cleaning of exterior glass for which Mighty Maid bid \$0.02 per square foot throughout the schedule. Subitem AA included the cleaning of 20,660 square feet of exterior glass for which Mighty Maid bid a unit price of \$0.02 and an extended price of \$7.00; obviously, either the unit price or the extended price was in error. In this instance, Mighty Maid was permitted to correct the extended price to \$413.20 which reflects the correct multiplication of the unit price bid and estimated quantity. We have no basis to object to the corrections of this nature.

Although Mighty Maid entered a unit price of \$0.0001 for subitem BS, the record is unclear as to whether it failed to enter an extended price. The fact that initials appears beside the extended price and the extended price appears in the list of corrections supplied by Mighty Maid after bid opening suggests that Mighty Maid did leave blank the extended price for subitem BS. We do not believe that should have barred award to Mighty Maid, however, since the extended price of \$720 used in the evaluation of Mighty Maid's bid and now contained in its contract was obtained simply by multiplying the unit price by the evaluation formula set forth in the IFB. This is distinguishable from the protester's situation, where the failure to make any entry whatsoever in subitem BS had the legal effect of not bidding upon a material requirement of the solicitation, rendering the bid nonresponsive.

The protest is denied.

for 
Comptroller General
of the United States