



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: T&A Painting, Inc.

File: B-227481

Date: August 21, 1987

DIGEST

Bidder's failure to acknowledge an amendment that applied only to an additive item did not affect the bid's acceptability since evaluation and award did not include the additive item, so that the amendment was irrelevant to the work awarded.

DECISION

T&A Painting, Inc., protests the award of a roofing contract to Baker Brothers Roofing & Supply, Inc., under invitation for bids (IFB) No. F04626-87-B-0020, issued by the Department of the Air Force. T&A argues that its low bid should not have been rejected as nonresponsive for the company's failure to acknowledge IFB amendment 0004. We sustain the protest because the amendment was not material to the work awarded.

The IFB contained a five item base bid, which required the contractor to provide all equipment, labor and material necessary to reroof 82 housing units at Travis Air Force Base, California. Item 002 of the base bid required removal and replacement of 110 SQ (squares), which is 11,000 square feet, of deteriorated roof sheathing. The IFB also required a bid on five additive items, to be awarded on an all or none basis, involving the reroofing of 28 additional housing units. Additive 006b, as amended by amendment 0004, corresponds to base bid item 002 and requires an estimate of the cost to remove and replace 40 SQ of deteriorated roof sheathing.

In the original bidding schedule, item 006b was erroneously designated in units of linear feet (LF). Amendment 0004 corrected that error by changing the LF designation to SQ. However, the protester failed to acknowledge this amendment and submitted its bid on the schedule that had the additive item designated in units of LF.

T&A argues that its failure to acknowledge amendment 0004 should not have caused the Air Force to reject the firm's bid, because it is obvious that the agency always meant SQ,

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since that is the standard unit of measurement in the industry. The Air force responds that the amendment in fact was material, and that the bid therefore was nonresponsive in that it did not represent an unequivocal offer to meet all of the invitation's material terms.

In our view, T&A's situation is similar to cases where a bidder is nonresponsive for a complete failure to bid on an additive item. There, we have held that when a bidder does not bid on additive items it runs the risk that its bid will be eliminated from consideration as nonresponsive only if the evaluation process dictates acceptance of the items not bid. Bids must be evaluated on the basis of the work actually awarded; any evaluation which incorporates more (or less) than the work that is awarded fails to obtain for the government the benefits of full competition on the work that will be performed. The failure to bid on an item not ultimately included in the evaluation and award thus is immaterial and does not affect the responsiveness of the bid. Fletcher & Sons, Inc., B-212530.2, Dec. 13, 1983, 83-2 CPD ¶ 678.

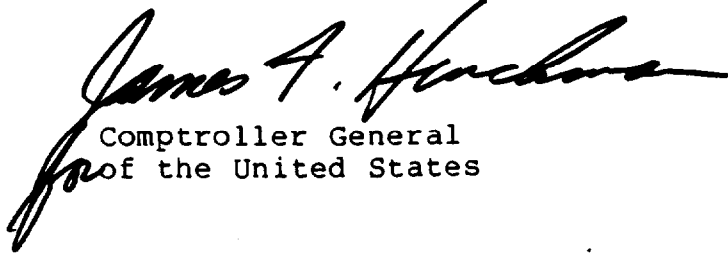
In the instant case, no additives were awarded because the funds available for the project were insufficient for award of more than the base bid. The IFB required award to the low responsive, responsible bidder; the "Additive or Deductive Items" clause stated that the low bidder for purposes of award would be the firm offering the low aggregate amount for the base bid item, plus or minus any additive or deductive bid items, "providing the most features of the work within the funds determined by the government to be available before bids are opened." Thus, as in Fletcher & Sons, the IFB's evaluation procedure and the available funding prevented acceptance of the additive item.

Therefore, irrespective of whether amendment 0004 was material, T&A's failure to acknowledge the amendment was irrelevant since the protester's bid was responsive to the work awarded. Thus, the contracting agency erred in its decision to reject T&A's bid as nonresponsive in its entirety.

Inasmuch as the protest was filed more than 10 days after award, no stop work order was issued and none of the remedies in section 21.6(a) of our Bid Protest Regulations, 4 C.F.R. part 21 (1987), is practicable. We therefore find that the protester was unreasonably excluded from the

procurement and that it is entitled to the reasonable costs of filing and pursuing the protest, as well as its bid preparation costs. 4 C.F.R. §§ 21.6(d) and (e). The protester should submit a claim directly to the contracting agency.

The protest is sustained.


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