



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Larry's Incorporated
File: B-230822
Date: June 22, 1988

DIGEST

Bid that acknowledges the amendments to a solicitation, but fails to include a price for an item added by an amendment, is nonresponsive since it does not represent a clear commitment to furnish the item at a specified price. Further, the price omission cannot be waived because the work covered by the added item is integrally related to and not practicably divisible from the other aspects of contract performance.

DECISION

Larry's, Incorporated, protests the rejection of its low bid as nonresponsive to invitation for bids (IFB) No. 8-SI-60-02810, issued by the Bureau of Reclamation (Bureau), Department of the Interior, for the construction of the South Fork Dike at the Buffalo Bill Dam, Cody, Wyoming. Larry's basically contends that its failure to provide a price for a bid schedule item, which caused the bid's rejection, should be waived, and that correction of a mistake in another price should be allowed.

We deny the protest.

The IFB advised that bids would not be considered for award for only part of the bid schedule, and that failure to bid on all items would disqualify a bid. The IFB was amended three times. This protest concerns amendment No. 2, which added to the bid schedule item No. 38, excavation for channels (1,400 cubic yards), and amendment No. 3, which increased item No. 29--furnishing and installing miscellaneous metal work--from 2,200 pounds to 4,100 pounds.

Sixteen bids, ranging in price from \$2,572,770 to \$4,331,930, were received in response to the IFB. The protester's low bid acknowledged all three amendments but failed to include the revised bid schedule pages substituted by amendments Nos. 2 and 3. As a result, Larry's submitted

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no bid for item No. 38 and based its bid for item No. 29 on the wrong quantity (2,200 pounds). The protester's bid therefore was rejected as nonresponsive.

Larry's contends that its bid was responsive because, by acknowledging all three amendments, the bid promises exactly what the government seeks to acquire. Larry's states it would have charged the government \$4,200 to perform item No. 38, although it now offers to do the work for free, and asks to correct its price for item No. 29 upward by \$4,750 (from \$5,500).

The Bureau properly found the protester's bid unacceptable because of the failure to price item No. 38. To be responsive, a bid must reflect an unequivocal offer to provide the exact item or service called for in the IFB so that acceptance of the bid will bind the contractor to perform in accordance with the IFB's material terms and conditions. The mere acknowledgment of an amendment increasing the number of items in a bid schedule is not sufficient to constitute a bid for the additional items. Contrary to the protester's position, where the bid does not include a price for the items added by an amendment, doubt exists not only as to the intended price for them but also as to whether the bidder in fact has offered, in the bid as submitted, to obligate itself to provide those items. Main Electric Ltd., B-224026, Nov. 3, 1986, 86-2 CPD ¶ 511.

Moreover, a nonresponsive bid cannot be made responsive by explanations after bid opening. BKS Construction Co., 66 Comp. Gen. 492 (1987), 87-1 CPD ¶ 558. If the Bureau allowed the protester to explain its bid after bid opening, Larry's would, in effect, have the advantage of electing to accept or reject the contract by choosing whether to make the bid responsive. Such a situation obviously would have an adverse impact on the integrity of the bidding process. Master Security, Inc., B-225719 et al., Feb. 26, 1987, 87-1 CPD ¶ 226.

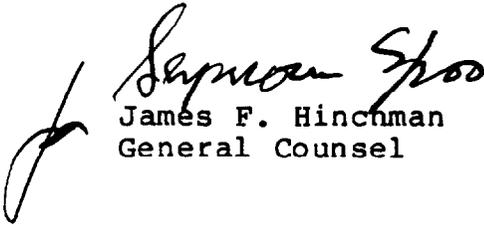
Larry's further argues that its bid nevertheless should be accepted based on our decisions that a pricing omission may be waived if the items added by an amendment are divisible from the original solicitation's requirements, are de minimis as to total cost, and clearly would not affect the competitive standing of bidders. See Leslie & Elliott Co., 64 Comp. Gen. 279 (1985), 85-1 CPD ¶ 212; aff'd, Ryan Electric Co.--Request for Reconsideration, B-218246.2, Apr. 1, 1985, 85-1 CPD ¶ 366. Larry's argues that (1) with the \$4,200 addition to its price (and/or a \$4,750 upward correction for item No. 29), there would be no effect on the competitive standing of bidders since the second low bid was

\$53,990 more than the protester's; (2) the omission of the bid price for item No. 38 is de minimis as to total cost; and (3) the 1,400 cubic yards of common excavation is a divisible portion of the contract work which any competent contractor specializing in excavation work can perform with minimal coordination between Larry's and the contractor.

It would not be proper to waive the protester's bidding error. According to the Bureau, the excavation work of item No. 38 is an essential and integral part of the overall contract performance and is indivisible from the other aspects of contract performance. The record indicates that the South Fork Dike will be a 35-foot high compacted zoned earthfill structure constructed, in part, from rock materials excavated during contract performance. In this regard, we note that the specifications anticipate the use of materials (such as riprap, sand, gravel and cobble) obtained during the excavation for channels in the construction of the dike embankment, and require the contractor to make a determination during excavation on the suitability of materials for use in the construction work. We see no legal basis in the record to disagree with the Bureau that the excavation for channels is not, as a practical matter, divisible from other aspects of performance; we do not think the agency ought to be forced, by the protester's mistake, into what the Bureau sees as an untenable performance situation.

The protester's failure to include a price for item No. 38 therefore cannot be waived, and the Bureau properly rejected the firm's bid as nonresponsive. In view of our conclusion, we need not consider the protester's request for correction of its price for item No. 29.

The protest is denied.


James F. Hinchman
General Counsel