



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: RO Contracting Company

File: B-235496

Date: August 31, 1989

DIGEST

Where bidder acknowledges all amendments to the solicitation but fails to bid a unit price for an item added by an amendment that revises the bidding schedule, contracting agency properly rejects bid as nonresponsive because it does not represent a clear commitment from the bidder to furnish the item at a specified price.

DECISION

RO Contracting Company protests the rejection of its low bid as nonresponsive to invitation for bids (IFB) No. NDABT10-89-B-005, issued by the Directorate of Contracting, Department of the Army, Fort Benning, Georgia, for dredging of the Uchee Creek. RO's bid was rejected because it did not contain a unit price for an item added by an amendment that revised the bidding schedule. RO contends that the bid should not have been rejected because the Army orally advised it prior to bid opening that as long as the price in its bid did not change and it acknowledged the change in the amendment, it would not be required to submit a new bid schedule.

We deny the protest.

The IFB, as issued on February 7, 1989, contained a bidding schedule that required bidders to insert a unit price and an estimated total cost for all material, equipment, and labor necessary to dredge an estimated quantity of 15,000 cubic yards of material. Subsequently, the Army issued seven amendments to the IFB. Amendment No. 0004 revised the bidding schedule by adding a new line item for a lump-sum

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price for all material, equipment, and labor necessary to mobilize and demobilize the equipment required to perform the work and an aggregate price for both line items. The amendment also cautioned bidders to insert a price for each item.

The Army changed the bidding format because mobilization and demobilization expenses are fixed costs. The Army states that if these costs were not separated from the estimated quantity of material to be dredged, the contractor could have incurred a substantial loss if the dredging quantity was less than the estimate, resulting in a claim from the contractor to recover these costs. If the dredged material exceeded the original estimate, then the government would have been paying an additional prorated mobilization charge for each cubic yard of material dredged.^{1/}

The Army rejected RO's low bid notwithstanding that it acknowledged all amendments to the IFB because RO utilized the original bidding schedule. RO contends that its bid should not be rejected because, prior to bid opening, the Army orally advised RO that it would not be required to bid using the revised bid schedule, if it acknowledged the change in amendment No. 0004. RO contends that it acted in good faith by acknowledging all amendments, and that its price reflected its total bid. However, the Army denies that RO was ever advised to bid using the original bid schedule and the contract specialist's record of the conversation does not reflect the advice that RO alleges was provided by the Army.

We find that the Army properly rejected RO's bid. 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. 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 these items. Larry's Inc., B-230822, June 22, 1988, 88-1 CPD ¶ 599.

^{1/} RO's unit price, including mobilization costs, was \$4.96, for a total bid of \$74,400. While the total price of the second low bid was \$98,524, with \$59,524 of the total being for mobilization costs, the unit price was only \$2.60.

Here, the IFB contained the standard "Explanation to Prospective Offerors" clause which informed bidders that they were required to request explanations or interpretations of the solicitation in writing and warned that oral explanations would not be binding. The oral advice that RO allegedly received would have obviated the purpose of the amendment and the specific instructions cautioning bidders to insert a unit price for each item contained in the amendment. Even if we accepted RO's version of the advice, oral advice does not bind the government and bidder's rely on oral advice at their own risk. See Oscar Vision Sys., Inc., B-232289, Nov. 7, 1988, 88-2 CPD ¶ 450.

Because the omitted item was material and the intended price could not be determined from information elsewhere in the bid, the Army properly rejected RO's bid. See H H & K Builders, B-232140, Oct. 20, 1988, 88-1 CPD ¶ 379. A nonresponsive bid cannot be made responsive by explanations after bid opening. Even though RO argues that its bid included mobilization and demobilization costs, to permit RO to explain its bid or to insert a price for these costs would be providing it two bites at the apple and according it the advantage of deciding after bid opening whether to make its bid responsive. Larry's, Inc., B-230822, supra.

The protest is denied.



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General Counsel