



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Robinson Engineering & Construction, Inc.

File: B-245995

Date: February 4, 1992

William J. Robinson, for the protester.
Howard B. Rein, Esq., and Paul M. Fisher, Esq., Naval Facilities Engineering Command, for the agency.
Adam Vodraska, Esq., and Barbara Timmerman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Bid which did not contain revised language as instructed by an amendment to the solicitation, but which acknowledged the amendment and listed the new required line items, is responsive where the bid otherwise meets the terms of the solicitation. The omission was properly waived by the agency as a minor informality.

2. Allegation that low bidder failed to complete representations and certifications is dismissed as untimely where protester did not initially raise issue in its protest to the agency and the time for raising the issue under GAO's bid protest regulations has expired.

DECISION

Robinson Engineering & Construction, Inc., protests the award of a contract to Titan Roofing, Inc., under invitation for bids (IFB) No. N62472-90-B-0251, issued by the Naval Facilities Engineering Command for structural and roof repairs at the Navy Blood Research Laboratory, Boston, Massachusetts. Robinson asserts that Titan, the low bidder, failed to fully comply with amendment 4 to the solicitation, causing its bid to be nonresponsive, and that Titan failed to complete certain representations and certifications. Robinson also alleges that LJH Contracting, Inc., the second low bidder, failed to acknowledge amendment 6 to the solicitation, and is thus also nonresponsive. Robinson was the third low bidder.

We deny the protest in part and dismiss it in part.

The solicitation was issued on June 24, 1990 and six amendments followed. The solicitation instructed bidders to state one lump sum, with unit price where required. Under item 1a, bidders were to give an estimated amount for the entire job except for the removal of asbestos pipe insulation which was to be priced separately as item 1b. The bid form specifically described item 1a as comprising "[a]ll work complete in accordance with the drawings and specifications but not including the work indicated or specified under 1b."

The agency subsequently issued amendment 4 which required bidders to add two new line items to the bid sheet (1c and 1d) and to insert the language ", 1c, and 1d" under the description of line item 1a. While Titan acknowledged receipt of the amendment, and included the two new line items on its bid sheet, it failed to insert the ", 1c, and 1d" language under line item 1a. Robinson alleges that Titan's bid is thus nonresponsive because it will result in the Navy paying twice for the same work.

The test for responsiveness is whether a bid as submitted represents an unconditional offer that will bind the contractor upon acceptance to perform the exact thing solicited in accordance with all the terms of the IFB. Seaward Corp., B-237107.2, June 13, 1990, 90-1 CPD ¶ 552. Unless something on the face of the bid either limits, reduces or modifies the obligation of the prospective contractor to perform in accordance with the terms of the IFB, the bid is responsive. Hughes Georgia, Inc., B-244936; B-244936.2, Nov. 13, 1991, 91-2 CPD ____.

Here, we find nothing on the face of Titan's bid limiting, reducing, or modifying its obligation to perform in accordance with the terms of the IFB. Titan provided a single total estimated amount as required by the solicitation "in strict accordance with [its] terms," which a simple calculation reveals to be the sum of items 1a, 1b, 1c, and 1d. Under these circumstances, Titan's omission of the ", 1c, and 1d" language is a matter of form rather than substance, a minor informality that has not prejudiced the other bidders,¹ and which may be waived under Federal Acquisition Regulation (FAR) § 14.405. GEM Engineering Company, Inc., B-231605.2, Sept. 16, 1988, 88-2 CPD ¶ 252.

In its letter received by us on September 30, 1991, Robinson protests for the first time that Titan Roofing failed to complete certain representations and certifications as

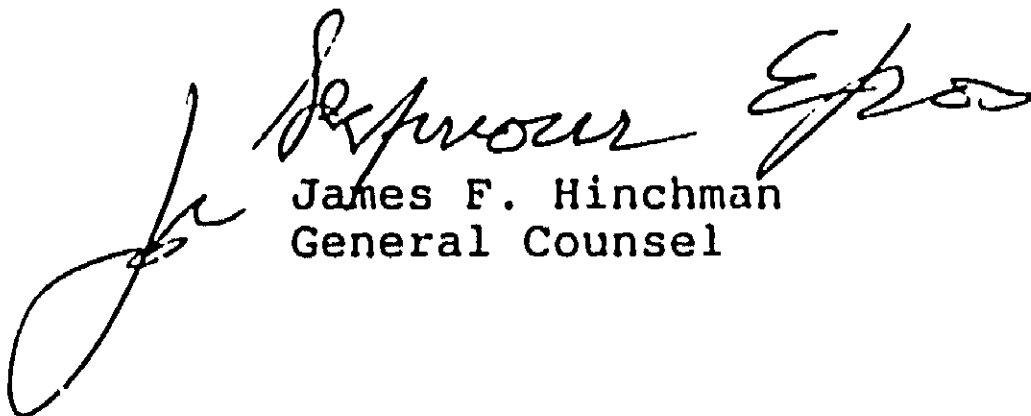
¹Indeed, LJH also omitted the language from item 1a, but, like Titan, its estimated amounts for each line item added up to the total estimated amount bid.

instructed. Specifically, Robinson protests that all of the procurement integrity clauses were not completed and that the SBA supplement was also not properly filled in. The Navy, however, presents a declaration by a contract specialist that "[t]he representations and certifications as submitted with the bid were completely and adequately filled in."

We need not address this allegation because it must be dismissed as untimely. A protest of other than an alleged solicitation defect must be filed within 10 working days after the basis of the protest is known or should have been known. 4 C.F.R. § 21.2(a)(2). Here, Robinson, after its review of bids at the September 4, 1991, bid opening, filed a protest letter to the agency dated September 9, contesting the responsiveness of LGH and Titan. At that time, as it concedes in its response to the Navy's report, Robinson knew the basis for its allegation that Titan's representations and certifications were not completed. Robinson, however, filed only a partial protest with the agency and first raised this new allegation on September 30, in its protest to our office. Robinson did not raise the issue previously because it stated "it is the Navy's responsibility to monitor the bids for any clear omissions and exceptions."

However, since Robinson has offered no adequate explanation, nor do we see one, as to why this issue could not have been raised in Robinson's protest to the agency, we conclude that Robinson's piecemeal presentation of this issue is untimely. Where a protester files a protest on one ground because it expects that the agency may take an action adverse to its interest, the protester may not delay raising additional protest grounds of which the protester should be aware. Armstrong Motorcycles, Ltd., B-238436; B-238436.2, June 5, 1990, 90-1 CPD ¶ 531.

The protest is denied in part and dismissed in part. Because Titan, the low bidder, was already awarded the contract, we need not consider Robinson's grounds for protest against the second low bidder, LJH Contracting, Inc.


James F. Hinchman
General Counsel