



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Walker Construction

File: B-246759

Date: March 30, 1992

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the decision.

### DIGEST

1. The fact that there are a number of minor defects in a  
bid does not require the bid to be rejected as nonresponsive  
where each individual defect may be waived as a minor  
informality.

2. Awardee's failure to submit a bid for an alternate item  
does not require rejection of its bid where the alternate  
item was not awarded.

### DECISION

Walker Construction protests the award of a contract to  
Atherton Construction, Inc. under invitation for bids (IFB)  
No. GS-09P-91-LTC-0111, issued by the General Services  
Administration (GSA) for the addition of a courtroom to the  
9th floor of the courthouse in Spokane, Washington. Walker  
asserts that the bid of Atherton should have been rejected  
as nonresponsive because of omissions in Atherton's bid.

We deny the protest.

The IFB was issued on September 30, 1991, for all labor and  
material needed to construct the courtroom. The IFB  
required bidders to provide one lump sum price to perform  
all work. The IFB also provided that the work must be  
completed within 210 days after the successful contractor  
received notice to proceed. The contract was to be awarded  
to the responsive, responsible bidder that submitted the  
lowest priced bid. On October 18, GSA issued amendment  
No. 1 to the IFB. The amendment included a new bid form  
which provided for bidders to submit, in addition to the

base bid, an alternate bid which would accelerate the time in which the project was to be completed to 146 days after notice to proceed was received by the awardee under the contract.

At the bid opening on October 30, GSA received six base bids ranging in price from \$1,196,752 to 1,698,419. Atherton submitted the low base bid, and Walker submitted the second low base bid of \$ 1,230,000. Atherton acknowledged receipt of amendment No. 1 but did not submit an alternate bid.

On October 30, after the bid opening, Walker filed a protest with GSA against any contract award to Atherton because Atherton's bid contained a number of omissions which, according to Walker, rendered the bid nonresponsive. The contracting officer reviewed Walker's allegations and determined that the omissions in Atherton's bid were minor and did not render the bid nonresponsive. On November 18, GSA awarded the contract to Atherton for the base bid and informed Walker of this decision. Walker then filed its protest with our Office.

In its protest, Walker asserts that Atherton's bid must be rejected as nonresponsive due to the omissions in its bid. Walker complains that Atherton did not sign or date the bid form, did not include the title of the person executing the bid form or the telephone number of the company, and did not use the revised bid form. Walker also argues that Atherton did not express in words its bid price (which was stated numerically), did not submit three complete copies of its bid, and did not submit an alternate bid. Walker also states that even if the individual omissions were minor, the number of omissions rendered the bid nonresponsive.

The test for responsiveness is whether a bid offers to perform the exact thing called for in an IFB, so that acceptance of the bid will bind a bidder to perform in accordance with all of the terms and conditions of the solicitation without exception. Omni Elevator Co., B-241678, Feb. 25, 1991, 91-1 CPD ¶ 207. A bid defect which is not material does not require rejection of the bid. Rather, it may be waived as a minor informality. A defect is minor if it does not affect price, quantity, delivery or quality or otherwise affect the bidder's obligations under the contract. See Federal Acquisition Regulation (FAR) § 14.405 (FAC 90-5).

Here, we have reviewed the omissions in Atherton's bid, and we conclude that the contracting officer properly concluded that the omissions were minor informalities that could be waived. For example, concerning Atherton's failure to sign its bid, the proper preparation of a bid is a responsibility which clearly rests with the bidder so as to ensure that the

contracting officer will accept it in full confidence that an enforceable contract will result. One element of such preparation is the bidder's signing of the bid document itself. However, there are certain situations where the bidder's failure to sign its bid may be waived as a minor informality when other dispositive evidence--such as where the bidder submits a bid guarantee which is signed and identifies the bid--demonstrates the bidder's intent to be bound by the bid. FAR § 14.405(c) (FAC 90-5); Cable Consultants, Inc., 63 Comp. Gen. 521 (1984), 84-2 CPD ¶ 127. Here, Atherton submitted a bid bond with its bid which was signed and identified the solicitation for which it was being submitted. Accordingly, Atherton's intent to be bound by its bid was clearly evidenced, and the firm's failure to sign the bid was properly waived as a minor informality.

Likewise, a bidder's failure to submit exact copies of its bid does not render a bid nonresponsive if the bid is not ambiguous as to the bidder's intended price. Hughes & Hughes/KLH Constr., 68 Comp. Gen. 194 (1989), 89-1 CPD ¶ 61. Here, the contracting officer concluded, and Walker does not dispute, that the incomplete copies of Atherton's bid did not render Atherton's price ambiguous. Accordingly, the agency properly waived Atherton's failure to submit exact copies of its bid as a minor informality.

Concerning Atherton's failure to submit an alternate bid, a bidder's failure to bid on an alternate item which was not awarded by the procuring agency does not render a bid nonresponsive. Niemela Constr. Co., B-237616, Feb. 7, 1990, 90-1 CPD ¶ 161. Walker alleges that this rule should not permit the award to Atherton to stand because, while the award to Atherton is for the base period, the agency intended to issue a change order after the contract was awarded to accelerate time for completion of the performance period to 146 days, the time period established for performance by the alternate which Atherton failed to bid. To support this allegation, Walker notes that a preconstruction conference held by GSA with Atherton on December 19, 1991, the GSA contracting officer's representative stated an intention to issue a unilateral change order accelerating the construction schedule from 210 days to 146 days. Walker also asserts that it was initially told that it would receive the contract award because the agency had determined that Atherton's bid was nonresponsive because Atherton did not bid on the alternate, thus reflecting GSA's intent to award the alternate. Walker asserts that it is only the result of pressure from Walker's protest that prompted the agency to forego issuing a change order to accelerate performance of the contract.

In response, GSA asserts that Walker was never told that it was going to receive the contract award and that Atherton's bid was nonresponsive. Rather, asserts GSA, Walker was told that the responsiveness of Atherton's bid was being considered. GSA further asserts that no change order was issued to the contract and that the contracting officer does not intend to issue a change order.

It would have been improper for GSA to issue a change order to accelerate Atherton's performance period to that required by the alternate bid item where GSA accepted Atherton's base bid after Atherton failed to submit an alternate bid. See Holk Dev., Inc., B-236765.2, Jan. 18, 1990, 90-1 CPD ¶ 65. The fact is, however, that while the record shows that at some point a GSA official considered issuing a change order to accelerate performance, GSA did not do so and has no intention of doing so. The contract was not awarded for the alternate item, and GSA does not intend to issue a change order to accelerate the period of performance. Accordingly, there is no basis to question the award.


We have reviewed the balance of Atherton's omissions and while we will not discuss them in detail, we believe that the agency properly waived the omissions as minor informalities.

Walker also argues that the total number of omissions in Atherton's bid renders the bid nonresponsive. In addition Walker complains that Atherton saved 10 minutes by not properly completing the bid forms, and thus had a competitive advantage over Walker and the other bidders who properly completed their forms.

As stated above, in assessing whether a bid is responsive our concern is with whether the bid will bind the bidder to provide the exact thing called for by the government. See Omni Elevator Co., supra. Atherton's bid is not rendered nonresponsive due to a number of minor omissions which do not affect its obligation to comply with the solicitations material terms. Nor do we find that Atherton's alleged 10-minute time saving gave Atherton a competitive advantage. Walker does not state what the advantage is other than that the amount of time saved in bid preparation immediately prior to delivery of the bid is significant. The agency reports, however, that Atherton's bid was submitted at 9:30 a.m., 4 1/2 hours before the 2:00 p.m. bid opening. Thus, it is unlikely that Atherton omitted portions of the bid in an attempt to submit a timely bid because Atherton was not running a risk of missing the bid opening deadline. More

important, the award under this IFB was based on low price. Walker does not explain how it could have or would have submitted the low bid if it had an additional 10 minutes in which to prepare.

The protest is denied.

  
for James F. Hinchman  
General Counsel