

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-190379 DATE: January 5, 1978
MATTER OF: General Engineering and Machine
Works, Inc.
DIGEST:

Low bid for repair of refrigerated cargo containers was properly rejected for failure to include bid price on item covering site preparation and maintenance of area where containers were delivered and stored, even though bidder contended that price of item was included in basic bid price. Work covered by item was regarded as material since it was set out in specifications in extensive detail as separate item calling for separate price and, therefore, omission could not be waived as minor informality. Where there is question as to whether bidder could be required to perform all work called for if he chose not to, integrity of bid system requires rejection of bid.

By mailgram of October 7 and letter of October 25, 1977, counsel for General Engineering and Machine Works, Inc. (General), protested the award of a contract to another firm under invitation for bids (IFB) NS2383-73-B0031, issued on September 22, 1977, by the Military Sealift Command, Pacific (MSCPAC).

The above invitation called for bids for the repair of refrigerated cargo containers during the period October 1, 1977, through March 31, 1978, pursuant to specification No. MSCP78-1. The General Provisions of the solicitation provided that the Government would furnish the successful bidder a secured

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area for maintenance work and storage of the containers. This was where the containers were to be delivered to the custody of the contractor. The specifications required that the bidders bid on one definite (Category "A") item, which covered site preparation and maintenance work in connection with the above-mentioned area, and 80 indefinite (Category "B") items involving work on the containers.

Bids were opened on September 30, 1977. Only two bids were received in response to the invitation. The bid submitted by D. Zelinsky and Sons, Inc. (Zelinsky), was considered to be responsive. However, General's bid was rejected because of its failure to state a price for the category "A" item and its failure to state a definite price for category "B" item 501. For item 501 General quoted a price of "\$84.00 plus parts." Award was made to Zelinsky on October 3, 1977.

It is General's contention that whereas each item of the category "B" items contained a location for a bid price per unit, the sheet which described category "A" contained no blank for inclusion of a price. General states that this was confusing and misleading to the bidder and because of this ambiguity it failed to quote a price for category "A." The invitation package did, however, contain a bid form (MSC Form 4330/7) which clearly provided separate spaces for category "A" and category "B" prices. General did not fill out this form, but instead typed its price on each item specification. General contends that the contracting officer could have determined General's bid price by adding the prices for category "B" items set out for each specification. General states that the work called for by category "A," i.e., site preparation and maintenance, is an integral part of category "B" and is normally included in the furnishing of the specific items called for under category "B." Thus, category "A" was a "no charge" item.

General further states that Zelinsky's bid price for category "A" was only \$1,800, whereas General's

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total bid price was \$20,000 lower than Zelinsky's bid price. General contends that the amount involved is trivial being less than 10 percent of the difference between the two bids and less than 1 percent of the total contract amount and, therefore, should be waived as a minor informality. General argues that under section 2-405 of the Armed Services Procurement Regulation (ASPR) (1976 ed.) the contracting officer should have waived, as immaterial and inconsequential, General's failure to fill out MSC Form 4330/7, since the price to be charged was shown for each category "B" item and there was no charge for category "A."

That portion of General's protest concerning the alleged ambiguity in the specifications is clearly untimely under our Bid Protests' Procedures, 4 C.F.R. § 20.2 (b)(1) (1976), because the protest of improprieties apparent prior to bid opening was not filed in our Office prior to bid opening. Atlas Railroad Construction Company of Georgia, Inc., B-188428, May 5, 1977, 77-1 CPD 313. Therefore, this aspect of General's protest will not be considered.

First it should be pointed out that General's failure to fill out MSC Form 4330/7 was considered to be a minor irregularity within the meaning of ASPR § 2-405 (1976 ed.) and was not the reason General's bid was rejected. It was General's failure to state a price for the category "A" item and the indefinite price for item 501 which were considered substantive and, therefore, the basis for rejection of General's bid.

Concerning General's contention that the amount involved, based on Zelinsky's bid price for category "A," is less than 1 percent of the contract price and should, therefore, be waived as a minor informality, we note that the work covered by category "A" is described by the general provisions and item 001 of the specifications and covers in excess of four pages of printed instruction. Thus, we cannot dismiss General's failure to bid on category "A" as a minor informality since a requirement important enough to be specified in extensive

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and finite detail should be regarded as material. 40 Comp. Gen. 458, 460 (1961). That standard appears to be applicable in the present case.

While General argues that the work called for by category "A" is an integral part of category "E" and is normally included in the specific items called for under category "B," the contracting officer takes a contrary view. According to the contracting officer, prior MSCPAC contracts similar to the present contract have contained a separate item for maintenance services and there has been a charge for such services. Consequently, the contracting officer concluded that it is not the normal or customary practice for the contractor to provide free maintenance services, or include such services in the category "B" items. But in any event, the services covered by category "A" were listed as a separate item calling for a separate price which General failed to include in its bid. In these circumstances, General could well argue that award to it under its bid would not bind it to perform the category "A" item of the specifications. While General states that the category "A" item was a "no charge" item, the bid does not indicate that this was General's intent. See 48 Comp. Gen. 757 (1969). For the foregoing reasons we believe that the failure to include a price for category "A" may not be waived as a minor informality. See 51 Comp. Gen. 543 (1972).

Also, in this regard, our Office has held that where there is any substantial question as to whether the bidder upon award could be required to perform all of the work called for if he chose not to, the integrity of the competitive bid system requires that the bid be rejected as, at the least, ambiguous unless the bid otherwise affirmatively indicates that the bidder contemplated performance of the work or the item was not to be awarded, which was not the situation in the present case. See B-173243, July 12, 1971; 41 Comp. Gen. 412 (1961). To hold otherwise would give a bidder an option after all bids had been exposed to argue, when bids were close in price, that the price for an item had already been included in another item. On the other hand, if the difference

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between bid prices was substantial, the bidder could urge that the item had been omitted and the price should be increased to include that item. See 41 Comp. Gen. 721 (1962).

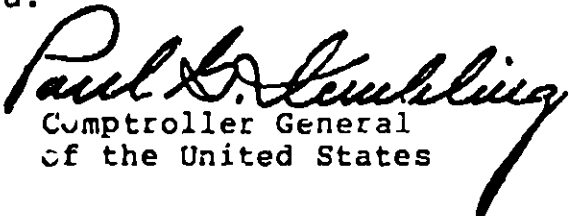
Of course, there is no possibility of correcting General's bid under the mistake in bid procedures, since it is a fundamental rule of the competitive bid system that in order to be considered for an award a bid must comply in all material respects with the IFB at bid opening. A bidder may not be permitted to add or modify its bid after the opening to make the bid comply with the requirements of the invitation, and it does not matter whether the failure to comply was due to inadvertence, mistake or otherwise. 46 Comp. Gen. 434, 435 (1966).

A bid is generally regarded as nonresponsive on its face for failure to include a price on every item as required by the IFB and may not be corrected. The rationale for this rule is that when a bidder fails to submit a price for an item, he generally cannot be obligated to perform that service as part of other services for which prices were submitted. Regis Milk Company, B-180302, April 18, 1974, 74-1 CPD 203.

For the foregoing reasons, the bid submitted by General was properly rejected as being nonresponsive. Therefore, it is unnecessary to consider the second defect in General's bid, i.e., General's failure to quote a definite price for item 501 of category "B."

The protest is denied.

For the


Comptroller General
of the United States