



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Mike Johnson, Inc.

File: B-271943

Date: August 14, 1996

Joel C. McCormick, Esq., McCormick, Dunn & Black, for the protester.
Capt. Timothy Domek and Marian E. Sullivan, Esq., Department of the Air Force,
for the agency.

Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General
Counsel, GAO, participated in the preparation of the decision.

DIGEST

Low bid that acknowledged all amendments, but was submitted on the original bid schedule calling for a lump-sum bid, instead of on the revised bid schedule added by an amendment to the invitation for bids (IFB), which broke up the contract work into three line items for which prices were requested, is responsive, where the revised bid schedule did not add any additional work beyond that encompassed in the original bid schedule, such that the lump-sum bid on the initial IFB bid schedule obligated the bidder to meet all of the amended IFB's requirements at the lowest price.

DECISION

Mike M. Johnson, Inc. protests the award of a contract to Federal Research, Inc. under invitation for bids (IFB) No. 45613-96-B-0010, issued by the Department of the Air Force, Fairchild Air Force Base, Washington, for the demolition of building 2150. Johnson contends that Federal's bid was nonresponsive for failing to complete the revised bidding schedule.

We deny the protest.

The initial IFB included requirements for testing for contaminated soil, heavy metals, petroleum, and polychlorinated biphenyls (PCB); the removal of hazardous materials; and the replacement of contaminated soil with uncontaminated soil. The initial IFB schedule called for a single lump-sum bid.

Amendment No. 0002 made various changes to the scope of work and incorporated a revised bidding schedule that separated the existing requirements under the statement of work into three separate line items. The first line item called for a lump-sum price for all work specified, except that work covered by the other two

line items. The second line item called for a unit price and an extended "not to exceed" price to excavate, test, transport, treat, dispose and replace "not to exceed" 50 cubic yards of contaminated soil. The third line item called for a unit price and a "not to exceed" total price to test "not to exceed" 20 samples of heavy metals, petroleum, and PCBs.¹ The total bid was the "not to exceed" total of the total prices for the three line items.

Federal submitted the low bid of \$449,000. Although Federal acknowledged all amendments, the bid was submitted on the original bidding schedule. Johnson's bid was next low at \$524,545.91; it acknowledged the amendments and utilized the revised bid schedule. The agency found Federal's bid responsive, waived Federal's failure to use the proper bid schedule as a minor informality, and permitted Federal to complete a revised bid schedule with unit prices for the second and third line items for the same total bid price.

Johnson protests that Federal's bid is nonresponsive because it was not submitted on the revised bidding schedule and therefore called into question Federal's obligation to meet the IFB's requirements with regard to the second and third line items for which unit prices were requested.

A bid is responsive as submitted when it offers to perform without exception the exact thing called for in the solicitation and acceptance of the bid will bind the contractor to perform in accordance with all the IFB's material terms and conditions. Inland Serv. Corp., B-249590, Dec. 7, 1992, 92-2 CPD ¶ 394. In certain circumstances, bids have been properly rejected where they were submitted on the original IFB schedule instead of an amended bid schedule, even where the bids have expressly acknowledged amendments containing the revised schedules. See e.g., Cooper Sportswear Mfg. Co., Inc., B-238998.5, Sept. 18, 1990, 90-2 CPD ¶ 225; Technical Support Servs., Inc., B-227328.2, Oct. 2, 1987, 87-2 CPD ¶ 322. In those cases, the amended bid schedule specifically listed additional material work that was not included in the original IFB and bid schedule, and the bids were nonresponsive because it was unclear whether the bidders bound themselves to perform the additional work. Id.

Here, the amended bid schedule did not add new work beyond that required in the initial bid schedule and Federal's bid acknowledged all amendments. The only change made by the revised bid schedule was to specify a maximum, "not to exceed" amount for the work that the contractor was obligated to perform under the second and third line items, whereas the original schedule had no such limits.

¹The bid schedule was itemized at the request of bidders to clarify that the government's requirements--for soil removal and testings as set forth in the IFB--would not exceed specified amounts.

There is no doubt that Federal's lump-sum bid obligated it to perform all of the contract requirements, inasmuch as the work encompassed by each of the itemized line items on the amended schedule was already required by the original bidding schedule. See Inland Serv. Corp., supra. Federal's bid simply reflected that firm's agreement to perform the entire contract work for a single, lump-sum price, which was the obligation required by the IFB. See Seaward Corp., B-237107.2, June 13, 1990, 90-1 CPD ¶ 552. Since there is no doubt that Federal's bid would be low in all circumstances and that it was obligated to satisfy all contract requirements, the Air Force properly determined that Federal's failure to use the revised bidding schedule was a waivable minor informality and that Federal's bid was responsive. See Inland Serv. Corp., supra.

Because Federal's failure to use the amended bid schedule was a minor informality and completion of the amended schedule was to the advantage of the government, the agency could permit Federal to complete the amended schedule, including unit prices for the second and third line items, after bid opening. Federal Acquisition Regulation § 14.405. While Johnson argues that the unit prices subsequently furnished on the amended bid schedule were unreasonably low as compared to Johnson's unit prices for the same line items, this provides no basis to challenge this submittal because there is no allegation or suggestion that Federal's low bid contained overstated prices for the other line item. See Advanced Modular Space, Inc., B-265860, Oct. 6, 1995, 95-2 CPD ¶ 168.

The protest is denied.

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