

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

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FILE:

B-212565

DATE: November 15, 1983**MATTER OF:**

Cillessen Construction Company

DIGEST:

1. Where a bidder acknowledges all of the amendments to an invitation for bids, but still uses the original bidding schedule, which was modified by one of those amendments, agency may nonetheless accept the bid since the bidder is bound to all the terms and conditions of the new bidding schedule.
2. An agency may accept a reduction in the total price of a bid which corresponds to a reduction in the total price of one of the listed items even though the unit price was not correspondingly changed since it is clear from the bid what the new unit price would be.

Cillessen Construction Company (Cillessen) protests the award of a contract to Industrial Constructors Corporation (Industrial) under invitation for bids (IFB) No. 3-5B-5D-00240/DC-7555 issued by the Department of the Interior, Bureau of Reclamation (Interior). The IFB solicited bids for pipeline laterals, stage 1-2, for the San Luis Valley Project in Colorado.

Cillessen's protest is denied.

Interior amended the IFB three times. Industrial's bid included its acknowledgment of each amendment. Amendment No. 2, among other things, modified the bidding schedule by deleting item 28 (furnishing drawings, documentation, and technical data for electrical installations for a fixed price of \$3,000) and advising bidders to include the cost of the item in the prices for the related equipment. Also, clause 9.5(b)(1) was changed by amendment No. 2 to advise bidders that up to a \$3,000 reserve could be established, apparently to assure delivery of the required material. Industrial nonetheless submitted its bid on the original bidding schedule form which priced item 28 at \$3,000. In

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addition, on the morning of bid opening, Industrial reduced its price for item 2(a) by \$25,000. This was noted by Industrial just below the total amount for the entire schedule and a new total amount for the schedule was written on the bidding schedule to reflect this reduction. The calculations for item 2A, unit and extended, remained as initially submitted.

Cillessen argues that Industrial's bid should not have been accepted because it did not include the modified bidding schedule. Cillessen also submits that another reason for rejection of Industrial's bid is that Industrial improperly modified its bid. It is Cillessen's position that a lump-sum reduction of the total amount bid for an item without an adjustment to the unit price rendered the bid nonresponsive. Furthermore, Cillessen notes that at bid opening, there was an immediate objection by a third party to the acceptance of Industrial's modification. Cillessen also advises that Interior, based on some concerns in regard to Industrial's bid, requested that Cillessen submit a resume and other materials as required by the IFB. Cillessen also objects to the fact that at the same time the latter request was made, it was told by Interior that it would be hearing favorably from Interior within 10 days but, subsequently, Interior advised Cillessen that award would be made to Industrial.

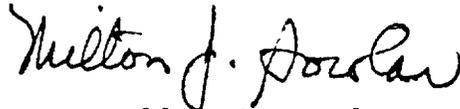
We find that Interior properly found Industrial's bid to be acceptable. The use of either bid form would have committed a bidder to perform the project as set forth in the IFB. Amendment No. 2 merely changed the bidding schedule format, not its substance. Each bidder, pursuant to amendment No. 2, clause 9.5(c), was still required to submit the material mentioned in item 28 of the original bid form. The only difference was where to include in the bid the cost of the specified material. Industrial's use of the original bidding schedule, along with acknowledgment of amendment No. 2, bound Industrial to all the terms and conditions of the new bidding schedule. See Federal Procurement Regulations (FPR) § 1-2.301(c) (1964 ed., amend. 178). Accord, Sere Construction Corp., B-205098, May 11, 1982, 82-1 CPD 453.

With respect to the improper modification allegation, Industrial's bid with or without considering the reduction in bid was the low bid. Therefore, we find no prejudice to the other bidders when Interior considered the reduction in Industrial's bid. We see nothing improper in Industrial's

reducing the total amount of its bid and noting how it arrived at that reduction. The fact that it did not correspondingly reduce the unit price for item 2A is immaterial. It is not only clear that the unit price is incorrect, but the new unit price is easily ascertainable from the bid itself. See Shamrock Five Construction Company, B-191749, August 16, 1978, 78-2 CPD 123.

Similarly, we do not find that Cillessen's last objection has merit. While Interior's actions might have misled Cillessen concerning which bidder would receive award, it is clear that no final decision was made at the time Interior requested additional material from Cillessen. Interior submits that such request is a part of its normal contingency procedure when questions are raised concerning the acceptability of the low bid. Based on our conclusions, above, we do not find that Interior's actions were improper or adversely affected the consideration of Cillessen's bid.

Cillessen's protest is denied.



Acting Comptroller General
of the United States