

DECISION

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

50013

FILE: B-183654

DATE: August 26, 1975

MATTER OF: Slater Electric Company

97453

DIGEST:

Where bid omitted price for one of 118 items, and bidding pattern for similar items showed consistent pricing, varying no more than \$.02 regardless of difference in quantity or location of installation, bidder may be permitted to cure omission as rule requiring rejection as nonresponsive does not apply where bid as submitted indicates probability and nature of error and amount intended.

Slater Electric Company (Slater) has protested against the rejection as nonresponsive of its bid under Specification DC-7100 issued by the Bureau of Reclamation, Department of the Interior.

Specification DC-7100 was issued to procure a 230-kilovolt phase shifting installation and a 345-kilovolt series capacitor bank installation at Liberty substation and at Mead substation. As initially stated, the bid schedule contained a total of 118 line items segmented into 3 parts, A, B and C, representing each of the 3 required installations. Supplemental notice No. 2 to the specification provided a new bid schedule which altered some of the items of the original bid schedule and added two new items, 67A and 112A, for 600 feet and 1600 feet of 6 pair, No. 19 AWG shielded copper multiconductor control cable at the Liberty and Mead substations, respectively. Inadvertently the revised schedule failed to provide lines for insertion of either the unit or extended price of item 67A, although such lines were provided for insertion of a unit and extended price for item 112A.

The four bids received under the specification were opened on April 2, 1975, and Slater was the apparent low bidder with a total project bid of \$1,426,065, while W. D. Whinery, Inc. (now Electric Technology Corporation) of Tacoma, Washington, was the second lowest bidder with a bid of \$1,486,646. However, Slater was advised by the contracting officer that its bid was nonresponsive for failure to bid on item 67A. (A unit and total price was included in the bid for item 112A.) Our decisions B-151332, June 27, 1963, and B-175740, July 5, 1972, were cited by the contracting officer in support of his determination. Slater timely protested to our Office and the Bureau has withheld award pending our decision.

In its initial letter in support of its protest, Slater states that while both B-151332 and B-175740 upheld the general rule that a bid submitted without a bid for an item is nonresponsive where the instructions require the bidder to bid on all items, both of these decisions note an exception to the rule. B-151332, supra, is cited for the proposition that "the only exception to this rule applies where the bid itself as submitted indicates not only the probability of error but also the exact nature of the error and the amount intended." Slater contends that this exception is applicable here. On the other hand, counsel for Electric Technology Corporation, the second low bidder, argues that Slater's omission of a price for Item 67A clearly results in the bid being nonresponsive, and there is no reasonable theory under which it can be concluded that Slater is bound to supply the wire called for, or the price thereof, under Item 67A.

Although the Department of Interior initially concurred in the contracting officer's rejection of Slater's bid, the Department has changed its position. Interior now requests that we find Slater's failure to bid on item 67A as falling within the previously stated exception to the general rule of nonresponsiveness for such an omission. The Department suggests that although an "exact" amount for item 67A cannot be ascertained from the bid, a close approximation within a limited range can be established by comparison with the pattern of pricing of certain other similar items and that the small resulting variance can be treated as de minimis or something similar to the concept of rounding off.

In considering a similar question in 52 Comp. Gen. 604 (1973) we stated:

"A fundamental rule of the competitive bid system is that in order to be considered for an award a bid must comply in all material respects with the IFB at opening. 46 Comp. Gen. 434, 435 (1966); B-162793, January 18, 1968. The bidder cannot add to or modify the bid after opening to make the bid comply with the IFB, and it does not matter whether an error is due to inadvertence, mistake or otherwise. B-161950, November 2, 1961. The question of responsiveness of a bid is for determination upon the basis of the bid as submitted and it is not proper to consider the reasons for nonresponsiveness. B-148701, June 27, 1962.

"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. B-176254, September 1, 1972; B-173243, July 12, 1971; B-165769, January 21, 1969; B-162793, supra; B-161929, August 28, 1967. The rationale for these decisions is that where a bidder failed to submit

a price for an item, he generally cannot be said to be obligated to perform that service as part of the other services for which prices were submitted. B-170680, October 6, 1970; B-129351, October 9, 1956.

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"Our Office has recognized, however, a very limited exception to these rules, and it is upon this exception that the Air Force recommends the correction of Hewlett-Packard's bid be permitted to stand. Basically, even though a bidder fails to submit a price for an item in a bid, that omission can be corrected if the bid, as submitted, indicates not only the probability of error but also the exact nature of the error and the amount intended. B-151332, June 27, 1963. The rationale for this exception is that where the consistency of the pricing pattern in the bidding documents establishes both the existence of the error and the bid actually intended, to hold that the bid is nonresponsive would be to convert what appears to be an obvious clerical error of omission to a matter of nonresponsiveness. B-157429, August 19, 1965.

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"The decisions which have turned on this concept and which have allowed correction of omissions have generally involved bidding schedules soliciting bids on similar items. These decisions are based on the proposition that the bidder indicates his intent to bid a certain price for an item otherwise not bid upon by bidding the same amount for the same material in other parts of his bid. For example, in B-150318(2), supra, although a bidder failed to bid on manholes in 4 of 78 subitems, whenever he bid on similar manholes in the other 74 items, he bid the same price consistently. We upheld the decision to correct the four subitem price omissions and stated the rule that:

'* * * an apparent low bidder may correct a price alleged prior to award, on an item which might or might not be ordered under the resulting contract, if the erroneous bid itself establishes a definite and easily recognizable pattern of prices which clearly indicates not only that the alleged error is anomalous to the pattern but also that the allegedly intended figure is one which is solely compatible with the pattern.'

"Similarly, where a bidder failed to show a price on a sub-item involving a particular type of upholstery, he was allowed to correct the bid by inserting a price for the subitem which the bidder had consistently bid on the same material elsewhere in the schedule. B-137971, December 9, 1958. The pattern of uniform pricing as established in the bidding documents is the essence of the exception which allows the determination and insertion of the intended bid price. B-146329, August 28, 1961."

The question here is whether Slater's bid provides clear evidence of such a pattern of uniform pricing.

Each group of similar items in the protester's bid is prefaced by the description:

"Furnishing and installing the following sizes of 600-volt, shielded, copper multiconductor control cable:"

The following unit prices were quoted for these items:

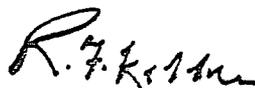
Cable	Part A (Transformer-Liberty Substation)	Part B (Capacitor Bank- Liberty Substation)	Part C (Capacitor Bank- Mead Substation)
2/0 AWG	\$5.20	-	\$5.18
2 AWG	-	3.20	3.20
6 AWG	1.80	1.82	1.80
8 AWG	1.10	1.09	1.10
5 conductor-10 AWG	1.23	1.23	1.25
12 conductor-10 AWG	3.10	3.10	3.10
6 pair, 19 AWG	-	(omission)*	1.05**

* Item 67A

** Item 112A

In each of the decisions cited above in 52 Comp. Gen. 604, supra, and in that decision itself, the bidder was permitted to insert an omitted price where he had bid consistently on the same item elsewhere in the invitation for bids and there was no basis upon which it could be concluded that the bid on the omitted item would be any different. In this case, although all of the prices for similar items were not precisely the same, they were the same for two items and the others varied by no more than \$.02. Furthermore, it is noted that while the quantity and location for installation of four of these items differed considerably, the variation in bid price was consistently minimal. Moreover, the solicitation stated that the bidder "proposes to perform all work" and "no bid will be considered for only a part of the schedule," and Slater omitted pricing only one of 118 bid items. In these circumstances, we believe it is reasonable to conclude that Slater erroneously omitted a price for Item 67A and the price intended for the omitted item was within \$.02 of that submitted for Item 112A. Thus, we believe the very limited exception to the general rule enunciated in 52 Comp. Gen. 604, supra, may be invoked to permit Slater to cure the omission. Since Slater has expressed its willingness to perform the contract, including the work called for under Item 67A, with no increase in its total bid, we believe award should be made at this price if otherwise proper.

In view of the foregoing, the protest is sustained.


Acting Comptroller General
of the United States