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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

Decision

Matter of: Thompson Metal Fab, Inc.

File: B-293647

Date: May 4, 2004

Gregory L. Powell, Esq., Foster Pepper Tooze, for the protester.
Rodney R. Mills, Esq., Seifer, Yeats, Mills & Zwierzynski, for Triad Mechanical, Inc.,
an intervenor.
J. Tyler Moore, Esq., United States Army Corps of Engineers, for the agency.
Paul N. Wengert, Esq., and Michael R. Golden, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Bid that contained multiple photocopies of bid schedule for one option, as substitutes for the bid schedule pages for three other options without clearly indicating that the photocopied pages were intended to relate to the other options required to be priced under the invitation for bids, was properly rejected as ambiguous and thus nonresponsive.

DECISION

Thompson Metal Fab, Inc., a small business, protests the rejection of its bid as nonresponsive to perform the McNary Lock and Dam Spillway Gate Rehabilitation project for the United States Army Corps of Engineers under invitation for bids (IFB) No. DACW68-03-B-0020. Thompson argues that its bid was unambiguous and responsive to the IFB.

We deny the protest.

The Corps issued the IFB on November 26, 2003. A series of amendments to the IFB were issued. As relevant here, on December 29, the Corps issued an amendment providing substitute pages for the bid schedule, "Section 00010" of the solicitation. As amended, the bid schedule consisted of ten pages, reflecting a base requirement (two pages) plus four options (two pages each). The base requirement provided for the rehabilitation of four gates. Each of the four options provided for the rehabilitation of one additional gate. The options were denominated "Option A -- Rehabilitate First Additional Gate" through "Option D -- Rehabilitate Fourth Additional Gate." RFP amend. 2, § 00010. For the successive additional gate options,

the bid schedule contained essentially identical contract line item descriptions and quantities for each option, with only the contract line item numbers (CLINs) increasing in sequence.

Sealed bids were opened on January 12, 2004. Upon examining Thompson's bid, the contract specialist identified a number of concerns. Agency Report (AR), Tab 6, Memorandum for Record, at 1. Instead of using the provided schedule pages for options B, C, and D, Thompson's bid contained photocopies of the option A pages, upon which Thompson had made a handwritten revision only to change the "A" to a "B," "C," or "D" at the top of the first page of each copy. Nevertheless, Thompson left the designation "FIRST ADDITIONAL GATE" unchanged on each, even though the original schedule had provided that options B, C, and D related to the second, third, and fourth additional gates, respectively. AR, Tab 4, Thompson Bid at 13th, 15th, and 17th pages (each numbered as "Page 5 of 118").

Also, the contract specialist noted that for each option, the option bid schedule consisted of two pages and the second page for each option contained a line for a subtotal of the option price. However, the second page of each photocopy of the option A page substituted by Thompson for the option "B," "C," and "D" bid schedule pages was still marked as "Total Option A." AR, Tab 4, Thompson Bid at 14th, 16th, and 18th pages (each numbered as "Page 6 of 118"). Further, since the only substantive change made by Thompson to the photocopied option A schedules was to replace the letter "A" with a "B," "C," or "D" on the first page, Thompson's bid for options B, C, and D only included CLINs utilized for option A (*i.e.*, because it used photocopies of option A pages, Thompson priced the option A CLINs "0030" through "0059" for all four options); Thompson's bid omitted all of the numbers related to the option B, C, and D CLINs (*i.e.*, CLINs "0060" through "0140").¹ As a result, in each case, the second schedule page of options B, C, and D in Thompson's bid was identical to the second page of its option A schedule. Contracting Officer's (CO) Statement at 3. Based on his review of Thompson's bid, the contract specialist concluded, among other things, that for options B, C, and D, Thompson had not bid for any of the CLINs contained on the second page of each option or for the option subtotal. CO Statement at 4.

After reviewing Thompson's bid, the contracting officer rejected it as nonresponsive. Thompson subsequently filed this protest with our Office.

Where an IFB provides that award will be made to the low aggregate bidder, a bid that fails to include a price for every item required by the IFB generally must be

¹ Thompson's bid also lacked a grand total and a note regarding the application of several CLINs. Given our conclusion that other omissions rendered its bid nonresponsive, it is unnecessary for us to address whether the deletion of those from the bid schedule also made Thompson's bid nonresponsive.

rejected as nonresponsive. HH&K Builders, B-232140, Oct. 20, 1988, 88-2 CPD ¶ 379 at 2, recon. denied, B-232140.2, Nov. 30, 1988, 88-2 CPD ¶ 537. This rule reflects the legal principle that a bidder who has failed to submit a price for an item generally cannot be said to be obligated to furnish that item. United Food Servs., B-218228.3, Dec. 30, 1985, 85-2 CPD ¶ 727 at 3.

Apart from whatever other defects may arise out of Thompson's failure to revise the numbers and the option descriptions to conform to the schedule, we agree with the contracting officer that there was no clear indication within Thompson's bid that Thompson priced approximately half of the option CLINs (those on the second page of options B, C, and D). This created doubt as to whether Thompson intended to furnish the services on those CLINs, and thus rendered its bid nonresponsive. See Jorgensen Forge Corp., B-255426, Feb. 28, 1994, 94-1 CPD ¶ 157 at 2 (bidder's use of "n/a" on bid created doubt whether bidder intended to furnish item, rendering bid nonresponsive). The Corps therefore properly rejected Thompson's bid as nonresponsive.

The protest is denied.

Anthony H. Gamboa
General Counsel