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**Comptroller General  
of the United States**

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

## Decision

**Matter of:** Newfield Construction, Inc.

**File:** B-286912

**Date:** February 6, 2001

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Thomas G. Librizzi, Esq., Pepe & Hazard, for the protester.  
Jerrilyn G. Marston, Esq., Bazelon Less & Feldman, for Tri-State Design Construction Company, Inc., an intervenor.  
Robert W. Pessolano, Esq., U.S. Army Corps of Engineers, for the agency.  
Tania Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### **DIGEST**

Agency improperly accepted bid that was nonresponsive where bidder failed to submit a price for one line item and submitted two different prices for a second line item; the bid, as submitted, precluded a determination of the exact nature of the error and the intended price for the omitted bid item.

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### **DECISION**

Newfield Construction, Inc. protests the award of a contract to Tri-State Design Construction Company, Inc. under invitation for bids (IFB) No. DACA27-00-B-0016, issued by the Department of the Army, Corps of Engineers, for a construction project at the Berry-Rosenblatt U.S. Army Reserve Center in West Hartford, Connecticut. Newfield contends that the Army improperly failed to reject Tri-State's bid as nonresponsive.

We sustain the protest.

This project involved the renovation and expansion of a training facility, as well as the demolition of an existing organizational maintenance shop (OMS) and the construction of a new OMS and a new unheated storage building. The amended bid schedule consisted of six line items. Five of these line items required the submission of lump sum prices; the sixth line item required the submission of both unit and extended pricing. The amended bid schedule also included a line on which bidders were to insert the total bid price. The bid form stated that offerors agreed to perform the work required at the prices specified in strict accordance with the terms

of the solicitation. Award was to be made to the responsible bidder whose total aggregate price was low.

The agency received four bids by the September 25 bid opening date. Tri-State submitted the apparent low bid of \$15,420,855 and Newfield submitted the apparent second-low bid of \$15,575,997. The agency examined Tri-State's bid and discovered that the firm had not filled in all of the bid items on the bid schedule form, as reproduced below:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0001	Primary Facility - Training Building (without steel H-piles separately priced in Item #6)	1.00	Lump Sum		<del>10,340,000</del>
				NET AMT	\$10,340,000
0002	Primary Facility - OMS (without steel H-piles separately price in Item #6)	1.00	Lump Sum		
				NET AMT	\$1,755,000
0003	Primary Facility - Unheated Storage (without steel H-piles separately priced in Item #6)	1.00	Lump Sum	283,000	
				NET AMT	\$1,480,000
0004	Support Facilities - Site Work (Work 5 ft. from building line)	1.00	Lump Sum		
				NET AMT	\$ _____
0005	OMAR Funded Items	1.00	Lump Sum		
				NET AMT	\$1,225,000
0006	Steel H-Piles	13790	LF	\$24.50	
				NET AMT	\$337,855
<b>TOTAL BID</b>					<b>\$15,420,855</b>

In view of the pricing ambiguities associated with Item No. 0003, and the omission of a price for Item No. 0004, the agency determined that Tri-State's bid should be rejected as nonresponsive.

Tri-State subsequently informed the Army that it had made a "clerical error" in its bid. Tri-State's letter stated that the error was one of transcription only, and that all of the information required by the bid documents, including the amount of the total bid, the amounts for each item of work, and the unit prices, where applicable, were included in the original bid. Tri-State explained that the net amount for Item No. 0003, \$283,000, was included on the bid form but not transcribed in the proper

space. Instead, the amount was inadvertently inserted under the term “Unit Price” for Item No. 0003. This led to the net amount for Item No. 0004, \$1,480,000, being transcribed on the net amount line for Item No. 0003 which, in turn, left the net amount line for Item No. 0004 blank. Tri-State’s letter enclosed a corrected copy of its bid.

Tri-State’s letter did not change the agency’s position. By letter dated October 2, the agency advised the firm that its bid was nonresponsive. However, after receiving a telephone call from Tri-State’s counsel, the agency conducted further legal review and discovered legal precedent that it believed would support a conclusion that Tri-State’s bid was responsive. Award was made to Tri-State on November 22 and this protest followed. Newfield argues that the agency’s initial position—that Tri-State’s bid was nonresponsive—was the correct position. We agree.

As a general rule, where, as here, 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 must be 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.

We have held that the omission of a price for a certain line item may be corrected in the rare circumstance where the price for the omitted item can be determined from the initial bid submitted based upon the difference between the total bid price and the sum of the line item prices present on the face of the bid. See, e.g., MKB Constructors, Joint Venture, B-250413, Jan. 15, 1993, 93-1 CPD ¶ 50 at 2-3, recon. denied, B-250413.2, June 8, 1993, 93-1 CPD ¶ 441. These cases apply the strict criteria required for correction of mistakes. See Federal Acquisition Regulation § 14.407-3(a). That is, the omitted price could be corrected only because the bid, as submitted, indicated that an error had been made, the exact nature of the error, and the intended price for the bid item. MKB Constructors, Joint Venture, supra.

Here, the Army relies upon our decision in MKB Constructors, Joint Venture to support its position that Tri-State’s bid is responsive. In our view, the Army’s reliance on this and the similar cases is misplaced. In that case, the apparent low bidder submitted pricing for 59 of 60 line items as well as a total bid price. The sum of the 59 line items for which pricing was submitted was substantially lower than the submitted total bid price. The contracting officer concluded that the firm had mistakenly omitted its bid price for the 60<sup>th</sup> line item and that the intended price for that item could be derived by subtracting the sum of the 59 line items that were priced from the total bid price on the bid schedule. The difference between these figures was in line with the other bidders’ prices and the government estimate for the 60<sup>th</sup> line item. In agreeing with the agency that the bid was responsive, we noted that the IFB provided that the work would be awarded as a whole to one bidder; given the unitary nature of the project, it was clear that the bidder, by submitting a bid for

this project that contained a total bid price that exceeded, by a substantial amount, the sum of the 59 bid prices, intended to include a price for the 60<sup>th</sup> line item and that the intended price was determinable from the bid itself.

Here, the Army asserts that Tri-State included prices for five of six line items, and that one simply has to subtract the prices for these five line items from the total price to arrive at the intended price for the sixth line item. According to the Army, this yields a figure of \$283,000, a figure handwritten on the bid, as the amount the bidder intended to bid for Item No. 0003. The Army adds that, while Tri-State erroneously placed its intended bid for Item No. 0003 to the left of the blank line for that item and then placed the bid for Item No. 0004 in the space for Item No. 0003, it included prices for all six line items on the original bid and the prices for both line items are in line with those of the other bidders and the government estimate.

The Army has improperly utilized Tri-State's unsupported post-bid-opening explanations to infuse its bid with more intent than is evident from the bid itself. In resolving questions of bid responsiveness, a bidder's intention must be determined from the face of the bid itself and evidence submitted after opening to show a bidder's intent may not be considered. Carter Constr. Co., Inc., B-187889, Apr. 4, 1977, 77-1 CPD ¶ 231 at 3.

While Tri-State's bid and the bid in MKB Constructors, Joint Venture are similar in that both omitted pricing for a line item, the two cases are distinguishable because Tri-State's bid contains an additional complication. As is evident from the bid itself, Tri-State entered two different prices for Item No. 0003: \$283,000 and \$1,480,000. There is nothing in the bid itself to explain this discrepancy and nothing in the bid itself to show which figure Tri-State actually intended to bid for this item. Unlike in MKB Constructors, Joint Venture, there are (at least) two mistakes at work here, not one. Since the intended bid for Item No. 0003 is not apparent from the bid itself, ascertaining the intended bid for Item No. 0004 is not simply a matter of adding up the priced line items and subtracting their sum from the total bid.

The fact that the bid's total price is the sum of all of the figures entered on the bid schedule does not necessarily mean that one of the figures listed for Item No. 0003 is the missing price for Item No. 0004. There is simply no way to tell from the bid itself the exact nature of the error, and the intended price for the bid item. See GTA Containers, Inc., B-249327, Nov. 3, 1992, 92-2 CPD ¶ 321 at 3. While rejection of Tri-State's bid may result in additional cost to the government for this procurement, it is well-established that a nonresponsive bid cannot be accepted solely on the basis of its lower price; acceptance of such a bid would compromise the integrity of the competitive bidding system. Id.

We recommend that Tri-State's bid be rejected as nonresponsive and that the agency award the contract to Newfield as the next-low bidder if otherwise appropriate. We also recommend that the protester be reimbursed the reasonable costs of filing and

pursuing the protests, including attorneys' fees. 4 C.F.R. § 21.8(d)(1) (2000). The protester should submit its certified claim for such costs, detailing the time expended and the costs incurred, directly to the contracting agency within 60 days after receipt of this decision.

The protest is sustained.

Anthony H. Gamboa  
Acting General Counsel