

28854

DECISION



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

FILE: B-212712 **DATE:** July 20, 1984

MATTER OF: Corroon & Black/Dawson & Co., Inc.

DIGEST:

1. Bid on solicitation for insurance coverage was responsive even though awardee's fire insurance policy provided for loss payment only after the property is repaired or replaced, since the solicitation language which the protester claims the awardee's policy violated pertained only to the time of setting the value of the damaged or destroyed property, not to the time of payment of any fire loss or damage claim.
2. GAO finds that it was reasonable for the agency to conclude, after applying general principles of insurance law, that the awardee's typed indorsement to its fire insurance policy, which complied with the solicitation, took precedence over a printed portion of the same policy which did not comply.
3. Awardee properly complied with the solicitation requirement that the bidders attach to their bids a proposed education program to prevent fire loss and that the cost of the proposed training program be included in the bid price. GAO concludes that language in awardee's bid which also offered assistance in obtaining for the agency certain training kits from the National Fire Protection Association at the agency's expense was merely informational and did not qualify the awardee's bid.

029492

4. GAO finds that solicitation requirement for the bidder providing a statement of how a preference in training and employment of Indians would be carried out related to the bidder's responsibility and need not have been completed prior to bid opening.

Corroon & Black/Dawson & Co., Inc. (Corroon), protests the award of a contract to Alexander & Alexander of Texas, Inc. (Alexander), under an invitation for bids (IFB) issued by the Department of Housing and Urban Development (HUD) pursuant to that agency's Indian Housing Master Insurance Program. The IFB was for insurance for Indian Housing Authorities for fire, automobile, and fidelity bond coverage under a single master policy. Corroon contends that Alexander's bid failed to comply with several of the IFB's material provisions and was nonresponsive.

For the reasons set forth below, we deny Corroon's protest.

Eight bids were received by HUD under the IFB. Alexander's bid of \$9,966,564 was determined to be the lowest, responsive bid. Corroon's bid of \$10,026,916 was the second lowest, responsive bid.

Fire Insurance Coverage

Corroon contends that the replacement cost coverage in the fire and extended coverage insurance policy Alexander submitted with its bid imposed an improper modification on the requirement in the IFB that the insurer pay full replacement cost at the time of loss and the bid is, therefore, nonresponsive. Corroon further claims that the effect of Alexander's limitation is enormous because the Indian Housing Authority itself must finance the repair or replacement of damaged property until payment under Alexander's policy is made.

HUD argues that Corroon's argument is based upon an inaccurate characterization of the IFB provision dealing with the valuation method of the insured property that is damaged or destroyed. We agree. Paragraph 3 of the IFB stated:

"FIRE AND EXTENDED COVERAGE AMOUNT. The coverage is to be provided on the basis of full replacement at the time of loss."

We find that HUD is correct in stating that the above-quoted IFB provision deals with setting the value of damaged or destroyed property at the time the damage or destruction actually occurs, while the questioned language in Alexander's policy deals instead with the time of payment of any fire loss or damage claim.

The IFB was silent with respect to when payment for damage or loss was to be made. Therefore, since the IFB clause was directed at the measure of damages, rather than when payment of those damages was to be made, we find that Alexander did not take any exception to the IFB by submitting a policy with its bid that contained a provision specifying the time any loss or damage claim would be paid. Therefore, the bid was responsive.

Coverage of Vacant Property

Corroon asserts that Alexander's fire insurance policy does not comply with the requirements of the IFB concerning insurance coverage of vacant or unoccupied property. More specifically, Corroon argues that Alexander's policy improperly limits loss payment by 15 percent for buildings that are unoccupied beyond a period of 60 consecutive days. Corroon points out that the IFB requires the bidders to allow insured property to remain vacant or unoccupied without any "limit of time." Consequently, Corroon takes the position that Alexander's 15-percent reduction in loss payment after 60 days of nonoccupancy was a qualification to the IFB's vacancy clause.

HUD states that Corroon has overlooked the effect of a typed endorsement attached to Alexander's bid which provided a vacancy clause identical to the IFB's. HUD further states that under principles of insurance law, a typed portion of an insurance contract is interpreted as a more deliberate expression of the intent of the parties than a printed portion such as the one which Corroon contends violates the IFB's vacancy clause. See 43 Am. Jur. 2d, Insurance §§ 279 and 280. Corroon offers no fact or argument to refute HUD.

We find that while there is a conflict between the typed endorsement to Alexander's policy which complies with the IFB's vacancy clause requirements and the printed policy language which does not comply, it was reasonable for HUD to conclude that it was the intent of Alexander in its bid to comply with the IFB requirements concerning loss payment for fire damages to vacant buildings. An essential element of a valid bid is that it be sufficiently certain in terms of

what it offers in order to enable the contracting agency to accept it with confidence that an enforceable contract meeting all the solicitation requirements will result. Interface Flooring Systems, Inc., B-206399; B-207258, Apr. 22, 1983, 83-1 C.P.D. ¶ 432. Here, HUD, through the application of general principles of insurance law, assured itself that Alexander's bid on its face complied with the requirements of the IFB's vacancy clause.

Cost of Training Materials

Corroon charges that Alexander's bid improperly charged extra costs for training materials which were over and above the total premiums for the various types of insurance required by the IFB. Corroon emphasizes that the IFB provided that award would be based on the lowest total projected premiums charged. According to Corroon, this means that all costs to the Indian Housing Authorities were to be included in the premium prices bid by the bidders and that there would be no additional costs besides the premiums. Corroon alleges that Alexander stated, however, that certain training materials for prevention of property loss could be requested by the Indian Housing Authorities at its expense. In Corroon's opinion, Alexander's attempt to impose these "extra costs" should have resulted in the rejection of the company's bid as being nonresponsive.

We find Corroon's arguments to be unconvincing. The IFB required only that the bidders attach to their bids a description of their education program to prevent fire loss. The IFB did not detail, however, any particular type of training program for loss prevention. The record shows that Alexander submitted a loss prevention program with its bid which consisted of engineers experienced in fire protection providing training sessions for selected individuals from the various Indian Housing Authorities. The record further shows that the cost of these training sessions was included in the premium price that Alexander bid. Therefore, it is clear that Alexander did submit some type of loss prevention program with its bid as required by the IFB and that the cost of this program was made part of the company's overall bid price.

With regard to Alexander's offer of training supplies, the record shows that Alexander referenced in its bid certain educational training kits and posters available from the National Fire Protection Association. Alexander further indicated that it would gladly have the association furnish

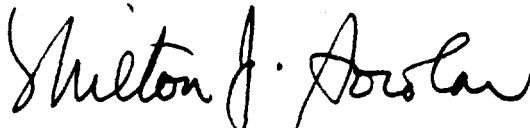
prices for the kits and posters upon request. We find that these statements by Alexander were merely informational and, therefore, did not evidence any intent by the company to qualify its bid. In our view, Alexander was calling attention to the fact that certain fire prevention training materials were available from the National Fire Protection Association and that Alexander would act as a go-between for the Indian Housing Authorities if these materials were wanted.

Indian Subcontracting Preference

Corroon alleges that Alexander did not furnish a statement with its bid as to its method for providing preferences and opportunities for training and employment of Indians. Corroon argues that since such a statement was required by the IFB, Alexander's bid was nonresponsive. In addition, Corroon asserts that not having Alexander show any preference at all toward Indian employment gave Alexander an unfair competitive advantage by saving the company the costs of subcontracting to Indian organizations and Indian-owned economic enterprises.

The IFB's provision for a statement of how a bidder's preferences and opportunities for Indian training and employment would be provided was only for information and need not have been completed by a bidder prior to bid opening. Further, we find that this provision was a contract performance requirement which pertained to how the work was to be accomplished. Thus, the Indian training and employment preference provision related to bidder responsibility, not responsiveness. See 41 Comp. Gen. 555 (1962); Contra Costa Electric, Inc., B-190916, Apr. 5, 1978, 78-1 C.P.D. ¶ 268. Accordingly, we cannot conclude that Alexander's bid should have been rejected as nonresponsive because the company failed to provide a statement setting forth its method of providing such preferences.

We deny Corroon's protest.

for 
Comptroller General
of the United States