



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: H.A. Sack Co., Inc.

File: B-237361

Date: February 16, 1990

Paul Roesel, for the protester.
Joseph A. Christiansen, for the interested party, Interstate General Government Contractors, Inc.
Herbert F. Kelley, Jr., Esq., Department of the Army, for the agency.
Paula A. Williams, Esq., Paul Lieberman, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest against alleged apparent solicitation impropriety-- inclusion of extended prices for line items for which allegedly inaccurate estimated quantities had been provided, as part of price for purpose of calculating low bid--is untimely when first raised by protester after bid opening.

DECISION

H.A. Sack Co., Inc., protests the award of a fixed-price contract by the Department of the Army to Interstate General Government Contractors, Inc. (IGGC). The award was made under invitation for bids (IFB) DAKF10-89-B-0104 for the repair or replacement of HVAC piping at Pinwheel Barracks, Buildings 1275, 1276, and 1277, Hunter Army Airfield, Georgia. Sack argues that the Army improperly calculated the bid prices in determining the low bidder.

We dismiss the protest as untimely.

The bid price schedule required base bids consisting of a lump sum line item entry for the repair and replacement of piping, and line item entries of unit and extended prices for the replacement of specified estimated numbers of various size pipe hangers for the sleeping wings of buildings 1275, 1276, and 1277. There were four additive bid items for additional areas in each building, all of which required similar lump sum and estimated extended price line item entries. The IFB advised that award would be made

on the basis of the lowest, responsive, responsible bid for the total of all base bid items and any combination of additive items in accordance with Department of Defense Federal Acquisition Regulation Supplement (DFARS) § 252.236-7082, entitled "Additive or Deductive Items." That clause, required for construction projects for which available funding may be insufficient for all desired work, provides that award will be made to the bidder offering the low aggregate amount for the base bid item, plus or minus (in order of priority listed in the schedule) those additive or deductive bid items providing the most features of the work within the funds determined to be available before bid opening.

The agency received three bids by the September 25, 1989, bid opening date. Since sufficient funds were determined to be available before bid opening, the base bids and all additives were calculated to determine the awardee. The protester's total bid was \$490,031.45 and the awardee's total bid was \$486,052.20. Award was made to IGGC, the low bidder on September 29. Thereafter, Sack protested to our Office.

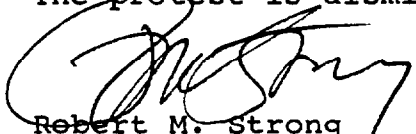
Sack alleges that the Army erroneously added the extended prices of the pipe hanger replacement line items to the lump sum items on the bid schedule to determine the low bid. Sack argues that since the IFB specifies only partial replacement of pipe hangers, as authorized by the contracting officer, the agency improperly included the prices for hanger replacement to determine the total dollar value of bids, because the estimated numbers of hangers to be replaced stated in the IFB are unreasonably high. Sack contends that it should be entitled to the award because its total bid is lower than IGGC's if the amounts entered for hanger replacement are excluded.

Sack's argument contradicts the plain language of the solicitation which provides for award based on the lowest total for base bids plus additives, each of which explicitly includes a lump sum line item for pipe replacement plus line items for the various sizes of hangers. Each hanger line item requires a unit price entry, provides an estimated replacement quantity, and calls for entry of the resulting extended price as a line item total amount. Thus, it is clear from the solicitation that the estimated hanger replacement prices would be included in each base bid and additive item, and we note that Sack, in fact, included the extended hanger prices in its total bid entry.

Sack's protest that the estimated hanger replacement prices should not be included in the bid calculation because the

estimate is inaccurate, and the actual hanger replacement must be approved by the contracting officer is, in reality, simply a protest against the unambiguous price evaluation formula contained in the IFB. Our Bid Protest Regulations require that protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening be filed prior to bid opening in order to be considered timely. See 4 C.F.R. § 21.2(a)(1) (1989). Since the solicitation formula for price calculation based on the allegedly inaccurate hanger estimates was apparent on the face of the solicitation, Sack's protest filed after award was made is untimely and not for consideration on the merits. Id.

The protest is dismissed.



Robert M. Strong
Associate General Counsel