



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Henry Angelo & Company, Inc.

File: B-241681

Date: February 13, 1991

Michael C. Spring, Esq., Carey, Dwyer, Eckhart, Mason, Spring & Becknam, P.A., for the protester.
Gregory H. Petkoff, Esq., Department of the Air Force, for the agency.
Mary G. Curcio, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly rejected protester's bid for failure to agree to paint masonry surfaces with texture paint is denied where the schedule of services in the solicitation required that masonry surfaces be painted with texture paint. Fact that specifications appear to give contractor the option to use other than texture paint is not dispositive since under the order of precedence clause incorporated in the solicitation, the schedule of services--which clearly calls for use of texture paint--takes precedence over the specifications.

DECISION

Henry Angelo & Company, Inc. protests the rejection of the bid it submitted in response to invitation for bids (IFB) No. F41691-90-B-0064, issued by the Department of the Air Force for interior and exterior painting.

We deny the protest.

The IFB was issued on June 8, 1990, for interior and exterior painting of miscellaneous buildings and military family housing at Randolph Air Force Base. Section B of the IFB, the schedule of services to be provided, was comprised of 15 line items. Each line item described a specific task to be performed. For example, line item 1 was "[p]aint walls, wainscot, ceiling & plane surfaces." Relevant to this protest is line item 3 of the schedule, which provides as follows:

"Paint masonry (any type), Full textured, first coat and full finish coat stucco and concrete (except concrete floors)." The IFB also contained detailed specifications which defined how each task of work was to be accomplished. Section 18 of the specification regarding general painting provides as follows: "PAINTING SCHEDULE: The PAINTING SCHEDULE prescribes the surfaces to be painted, and the number and types of coats of paint." Section 18.1 states:

"Contractor's Options: The PAINTING SCHEDULE provides for Contractor's options as specified by the word 'or' between options for one coat and '----or----' between options for coating systems."

The relevant portion of the painting schedule reads as follows:

"PAINTING SCHEDULE"

<u>Surface</u>	<u>First Coat</u>	<u>Second Coat</u>	<u>Third Coat</u>
Exterior Stucco	TT-P-19	TT-P-19	
	TT-P-95, Type II, Class 3	TT-P-95, Type II, Class 3	
	- - - or - - -		
	'Texture Coat' or as specified		
<hr/>			
Exterior concrete masonry units	TT-F-1098 or A-A-1500	TT-P-19	
	TT-F-1098 or A-A-1500	TT-P-95 Type II, Class 3	TT-P-95 Type II, Class 3
	Cement-emulsion filler	TT-P-19	
	- - - or - - -		
	'Texture Coat' As specified		
<hr/>			
Exterior concrete surfaces	TT-P-19	TT-P-19	
	- - - or - - -		
	'Texture Coating' as specified."		

On the bid opening date, July 9, four bids were submitted ranging in price from Henry Angelo's low bid for the base and option year of \$631,185 to \$1,427,156.50. The government estimate for the work was \$1,204,834. Because Henry Angelo's bid was so much lower than the other bids and the government estimate, the firm was requested to verify its bid. By letter of July 19, Henry Angelo verified its bid. In doing so Henry Angelo explained that it had learned that one of the big price differences between its bid and that of two of the other bidders was for the cost of masonry painting. Henry Angelo speculated that the two other bidders must have based their bids for the masonry painting on the use of a textured coating while, based on the option provided by the specifications, Henry Angelo intended to use a different material, TT-P-19, for the masonry surfaces.

On July 27, the contracting officer informed Henry Angelo that its interpretation was incorrect and that line item 3 of the schedule clearly specified that texture paint be used for the masonry surfaces. Henry Angelo was again asked to verify its bid. The protester responded by agreeing to perform the painting for the price it bid in accordance with its interpretation of the specifications. The protester specifically stated that it would not apply texture paint to the masonry surfaces. Henry Angelo also suggested that the government could reject all bids, correct the specifications, and resolicit. By letter of September 28, the contracting officer rejected Henry Angelo's bid on October 15, Henry Angelo submitted its protest to our Office.

Henry Angelo argues that the painting schedule gave bidders the option to use texture paint or one of the other specified paints on the masonry surfaces and thus its bid was improperly rejected for choosing one of the options. In the alternative, Henry Angelo argues that the solicitation is ambiguous and therefore the government should be required to cancel the solicitation and resolicit. In this regard, Henry Angelo argues that because line item 3 of the schedule contains a comma both before and after "full textured," there is no real indication as to what that term refers to. Henry Angelo therefore argues that if the contract is read as a whole, the schedule and specifications may be reasonably interpreted in two different ways. Henry Angelo concludes that its interpretation--that the government intended to offer the contractor an option regarding what painting system to use--was reasonable.

In reply, the Air Force argues that line item 3 of the schedule clearly required a full textured first coat for masonry surfaces. The Air Force asserts that to the extent there was an inconsistency in the solicitation between the

section B schedule of services and the Painting Schedule in the specifications, the order of precedence clause, Federal Acquisition Regulation (FAR) § 52.214-29, which was incorporated into the solicitation, directs that the schedule takes precedence over the specifications.

While the solicitation could have been clearer, Henry Angelo's interpretation of the specifications ignores the order of precedence clause in the IFB. That clause resolves any inconsistency between the schedule of items and the specifications in favor of the schedule. See SPM Mfg. Corp., B-229844, Apr. 13, 1988, 88-1 CPD ¶ 363. Thus, the section B schedule, which calls for use of a "full textured" first coat on masonry surfaces, controls.

Henry Angelo argues that the schedule itself did not clearly define the agency's requirement for painting masonry surfaces with a texture paint because of the placement of the commas. We agree that procuring agencies are required to clearly state their requirements; the purpose of this rule, however, is to put potential bidders on notice of the agency requirements, not to ensure that solicitations are grammatically perfect. Here, while the placement of commas before and after "full textured" may have caused some confusion, the only reasonable reading of the reference to "full textured" in line item 3--"Paint; masonry (any type), [f]ull textured, first coat . . ."--is that the agency intended that masonry surfaces be painted with a first coat of textured paint. See Buckwood Contractors, Inc.--Recon., B-219575, Nov. 20, 1985, 85-2 CPD ¶ 569. Since Henry Angelo did not base its bid on painting the masonry surfaces with texture paint, its bid was properly rejected.^{1/} See Kumar Mechanical Inc., B-240433, Nov. 13, 1990, 90-2 CPD ¶ 391.

^{1/} The Air Force suggests that the basis for rejection of the bid is that it is nonresponsive. However, as the Air Force admits, the Henry Angelo bid is responsive on its face; such a bid may not be made responsive on the basis of information submitted by the bidder after bid opening. Abbott Power Corp., B-186198, Jan. 7, 1977, 77-1 CPD ¶ 13. Rather, in cases such as this, bid rejection is premised on the mistake-in-bid rules, particularly FAR § 14.406(g)(5), which permits a contracting officer to reject a bid when there are clear indications of error in the bid such that acceptance of the bid would be unfair to the bidder or to the other bidders. See, e.g., TLC Financial Group, B-237384, Jan. 26, 1990, 90-1 CPD ¶ 116; Tark Int'l, B-228170.4, Jan. 13, 1988, 88-1 CPD ¶ 26; Potomac Iron Works, Inc., B-212448, Nov. 15, 1983, 83-2 CPD ¶ 566.

Any conflict between the schedule and the specifications was apparent from the face of the solicitation, and to the extent that Henry Angelo believes the provisions were inconsistent and the IFB was ambiguous as a result, it was on notice of this basis of protest from the face of the IFB. Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1990), require that protests based upon alleged improprieties, which are apparent prior to bid opening, must be filed with either the contracting agency or our Office prior to bid opening. Henry Angelo did not file a protest regarding these provisions until at the earliest August 1, when it complained to the agency. Since this was well after the July 9 bid opening date, the protest that the solicitation is ambiguous is untimely and will not be considered on the merits. GM Indus., Inc., B-216297, May 23, 1985, 85-1 CPD ¶ 588.

The protest is denied.


for James F. Hinchman
General Counsel