

R. Ashlock



Comptroller General
of the United States

621224

Washington, D.C. 20548

Decision

Matter of: Southern California Engineering Co., Inc.
File: B-255945
Date: April 20, 1994

Phillip W. Akwa for the protester.
David Trangsrud, for Tenyer Coatings, Inc., an interested party.
Ron R. Ashlock, Esq., and Paul M. Fisher, Esq., Department of the Navy, for the agency.
Paul E. Jordan, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly rejected low-priced bid as unreasonably low pursuant to Federal Acquisition Regulation § 14.406-3(g)(5), where the bid was based upon a misinterpretation of the contract requirements.

DECISION

Southern California Engineering Co., Inc. (SoCal) protests the rejection of its bid under invitation for bids (IFB) No. N62471-92-B-1323, issued by the Department of the Navy, for antenna safety improvements at the Naval Computer and Telecommunications Area Master Station in Oahu, Hawaii.

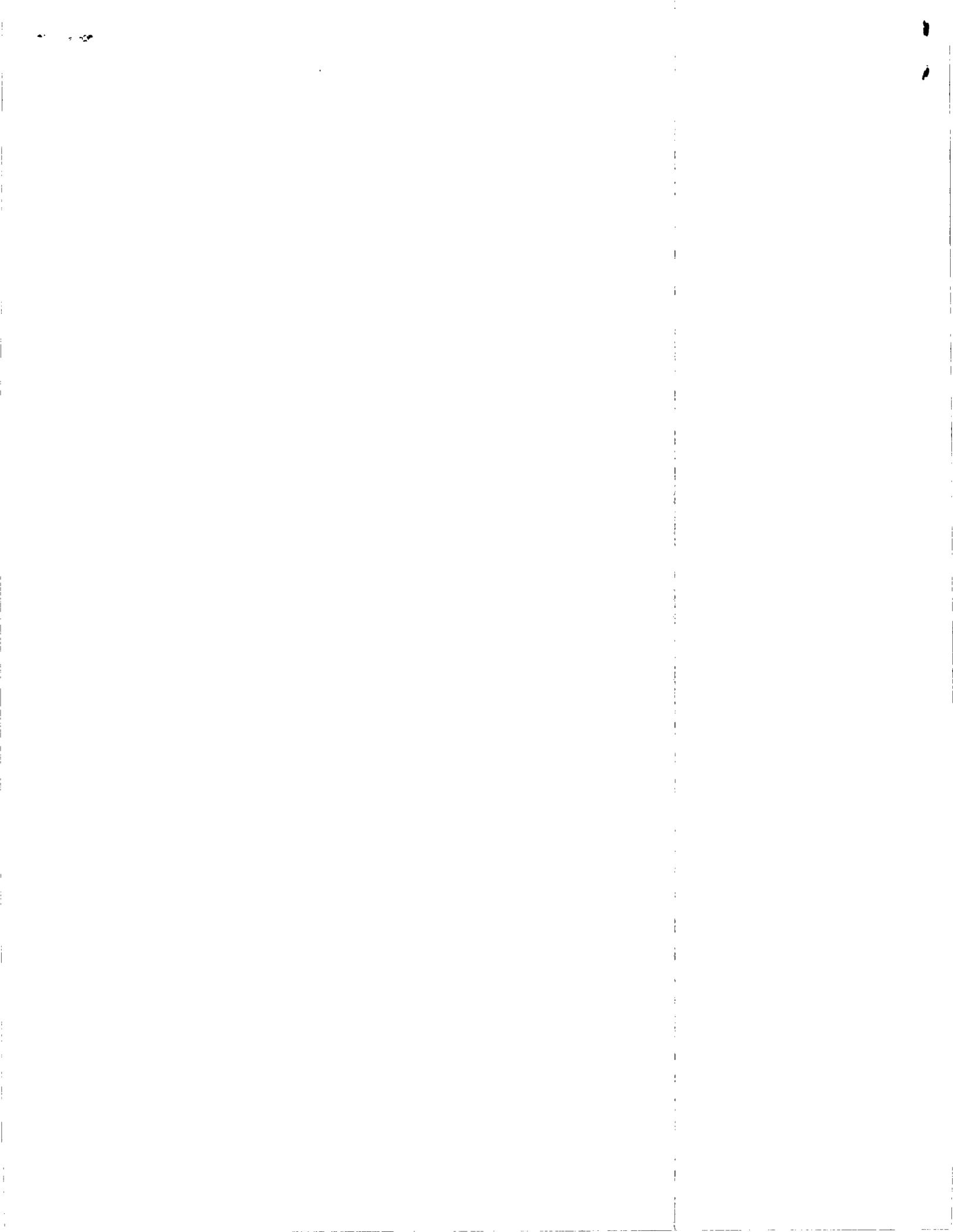
We deny the protest.

The IFB requested lump-sum bids for various safety improvements to two 1,500 foot-antennas. The work includes construction of fiberglass reinforced plastic handrails, stainless steel chain gates, stainless steel tower safety rail systems, signs, touch-up painting, lead paint removal, and incidental related work.

Bid opening was on September 10, 1993. SoCal submitted the low bid of \$429,700, which was approximately 51 percent below the government estimate of \$870,000 and 43 percent below the next low bid of \$748,900.¹ By letters of September 15, the Navy requested that SoCal and the other two lowest bidders verify their bids. In its letter, the

¹The remaining bids ranged from \$787,780 to \$2,900,000.

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Navy advised SoCal that it considered SoCal's bid to be substantially below the other bids and the government estimate. All three low bidders verified their bids.

In view of SoCal's substantially low bid and the presence of unusual requirements in the IFB, the Navy requested a second verification of SoCal's bid, this time directing the protester's attention to nine IFB requirements. These included experience requirements and various limitations on the work. Of relevance to this protest is the following requirement at section 1.7.3.n:

The Contractor shall provide approved physical protection (such as two layers of 3/4 inch plywood barriers with 4X4 lumber framing) for the tower base insulator and guy wire strain insulators² to guard against damage from falling objects during the course of construction. Provide protective netting directly below the work level, and physical protection around all insulators."
[Emphasis added.]

SoCal reconfirmed its bid and explained that its price included all the requirements except the highlighted portion of section 1.7.3.n. According to SoCal, "[n]o estimate was prepared for the protection of guy wire strain insulators as there is no indication in the bid documents as to location, quantity, or type of insulators which require barriers."

On October 7, the Navy again wrote SoCal and advised that it was required to provide protection for the guy wire strain insulators in accordance with the IFB's specifications. The Navy further advised SoCal that the protection could not be a condition to its bid confirmation and that no upward price adjustment would be considered after award. Since the cost of the protection could be substantial, the Navy suggested that SoCal review this and other areas of its bid. The Navy also explained that SoCal could request withdrawal of its bid, based on a mistake, by submitting the original file copy of its bid, original worksheets and data used in preparing the bid, and any other evidence to establish the existence of the error, the manner in which the mistake occurred, and the bid actually intended.

On October 11, SoCal again confirmed its bid, but argued that the Navy had not included sufficient information in the

²A guy wire strain insulator, which usually is made of ceramic material, resists the flow of electrical current so that the guy wires do not act as part of the antenna transmitter system.

IFB regarding protection for guy wire strain insulators. SoCal also advised that it had "now developed pricing to provide protection" for the insulators which, when added to its bid, would result in a total price "still substantially below" the next low bid. The protester did not include a specific price or any calculations of this additional pricing. SoCal maintained that it had met the requirements for confirmation of its bid as delineated in the Federal Acquisition Regulation (FAR) and proposed that the Navy award it the contract. According to the protester, if conflicts existed, they could be resolved under the disputes clause of the contract. On December 8, SoCal filed this protest with our Office.³ Two days later, the Navy rejected SoCal's bid as unreasonably low and nonconforming to the IFB's requirements.

SoCal contends that the IFB provision regarding insulator protection is intended to provide "robust physical protection for the base insulator only." In the protester's view, and based on its first-hand knowledge of the various sizes, shapes, numbers, and configurations of guy insulators, due to the absence of any description of guy insulators, the need for external covering is not required by the IFB. SoCal states that it intended to perform the work in such a way that damage to the insulators would be precluded and thus, it determined that protective measures were not required. The Navy maintains that the IFB clearly requires the successful contractor to provide protection for all insulators and that SoCal's failure to include pricing for such protection made its bid unreasonably low and nonconforming to the IFB.

Where, as here, a dispute exists as to the meaning of a solicitation provision, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions. Zeta Constr. Co., Inc., B-244672, Nov. 5, 1991, 91-2 CPD ¶ 428. Applying this standard, we find SoCal's interpretation was clearly unreasonable.

The IFB includes various restrictions on the contractor's use of equipment and operations. Under the heading

³In its original protest, SoCal argued that the Navy was effectively conducting negotiations in its efforts to resolve the issue of its low bid. We disagree. Where, as here, a contracting officer suspects that a mistake has been made, he or she must request a verification of the bid, calling attention to the suspected mistake. FAR § 14.406. We find nothing improper in the contracting officer's inquiries and repeated attempts to determine the origin of the suspected mistake in SoCal's bid.

"Coordination With Other Work," the IFB restricts the time during which the contractor may work on the antenna towers and the need to be prepared, at any time, to stop work on 4 hours notice to allow for emergency radio transmissions.⁴ The provision at issue here, and others, concern protection of the towers and their attachments. This provision requires that the contractor "shall provide approved physical protection" not only for the base insulator, but the guy wire strain insulators as well, to guard against damage from falling objects. [Emphasis added.] The provision later repeats the requirement to provide "physical protection around all insulators." [Emphasis added.] In view of the need for the contractor to repeatedly move its tools, equipment, and materials onto and off the towers, and the IFB's provisions to guard against dropping items, it is clear that the Navy anticipates the risk of falling objects and resulting damage. For this reason, the IFB provides a plain and all encompassing requirement to physically protect "all" insulators. From our reading of the IFB, there is no other reasonable reading of this provision and the protester does not identify any IFB provision which contradicts this requirement. SoCal's decision to ignore this requirement does not establish such a contradiction.

Our conclusion is not changed by the alleged lack of sufficient detail in the provision. The IFB includes plans showing the position of guy wires and provided for an on-site visit. The protester had extensive knowledge concerning the subject towers and other similar towers and had firsthand knowledge of guy wire strain insulators.⁵ Further, without any additional information from the Navy, the protester was able to calculate pricing to provide the necessary protection for the insulators. If, as SoCal alleges, it possessed insufficient information to estimate this aspect of its bid or if it believed the agency intended for it to use an inappropriate method to protect the insulators, it was incumbent upon the protester to seek clarification of the specifications prior to submitting its bid. To the extent that SoCal is protesting an alleged deficiency in the specifications, its failure to do so prior to bid opening makes this allegation untimely under our Bid Protest Regulations. 4 C.F.R. § 21.2(a)(1) (1993).

⁴Specifically, the IFB restricts the contractor to work on one tower at a time, for a maximum of 5 consecutive weeks, with all materials and equipment stored or removed at the end of each day.

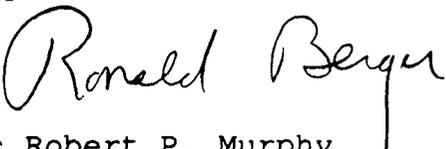
⁵A SoCal officer prepared the bid, and procured and supervised erection of the towers when the Navy originally purchased them.

Even though SoCal's bid was responsive on its face, we find that the agency properly rejected it in accordance with FAR § 14.406-3(g)(5). This regulation allows rejection of a mistaken bid after attempts to verify the bid price, if the price is so far out of line with other bids or the government estimate, or if there is other evidence of error so clear that acceptance of the bid would be unfair to the bidder or to other bona fide bidders. See Zeta Constr. Co., Inc., supra; Martin Contracting, B-241229.2, Feb. 6, 1991, 91-1 CPD ¶ 121. Here, both situations are present. SoCal's bid was considerably less than any of the other bids and the government estimate for the work. Further, since the solicitation requires protection of all insulators, any bid which did not contemplate provision of that protection would be in error. SoCal's protest clearly shows that its bid was based on a mistaken interpretation of the protection requirement. Acceptance of SoCal's bid would be unfair to other bidders which took the substantial pricing of insulator protection into account in formulating their bids.

SoCal argues that it should be permitted to modify its bid to take into account protection of the guy wire strain insulators. Although recalculation of certain mistakes is sometimes appropriate, a bidder cannot recalculate and change its bid to include factors that the bidder did not intend to include with the bid submitted. See General Elevator Co., Inc., 57 Comp. Gen. 257 (1978), 78-1 CPD ¶ 81; Zeta Constr. Co., Inc., supra; L.F. Leiker Constr. Co., Inc., B-238496, May 4, 1990, 90-1 CPD ¶ 453. Since SoCal's protest plainly shows that it did not intend to provide protection for the guy wire strain insulators, recalculation is not an option here.

SoCal also argues that this matter could be addressed under the changes clause of the contract after award. The integrity of the competitive procurement system precludes the Navy from awarding the contract to SoCal with the intent of making a material modification to the requirements soon after the award. See Zwick Energy Research Org., Inc., B-237520.3, Jan. 25, 1991, 91-1 CPD ¶ 72. Accordingly, award to SoCal under these circumstances would be improper.

The protest is denied.


 Robert P. Murphy
 Acting General Counsel