

Teraz



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Department of the Interior--Request for
Advance Decision
File: B-228262
Date: January 12, 1988

DIGEST

1. The Department of the Interior is authorized to pay a contract line item for bonds and insurance that is in excess of the cost of the bonds and insurance, where payment of the amount for that item is consistent with the language of the contract and the intent of the parties.
2. Where the language in a contract is clear and unambiguous, contractual terms will be given their usual and ordinary meaning.
3. Where the contracting officer determines that a mathematically unbalanced bid is not materially unbalanced because award will result in the lowest overall cost to the government, and a contract is awarded on that basis, the government is obligated to pay the contractor in accordance with the terms of the contract.

DECISION

The Bureau of Reclamation of the U.S. Department of the Interior requests an advance decision on whether the Bureau is authorized to pay a contractor the bid amount in excess of the premiums paid under a lump-sum bid for bonds and insurance based on a clause in the contract which provides for said payment. We hold that the Bureau is authorized to pay the claim.

Ball, Ball & Brosamer (BBB) was awarded an indefinite quantity contract under solicitation No. 6-SI-30-04800 for Central Arizona Project Aqueduct repairs on September 30, 1986. The 1-year contract contained a guaranteed minimum of \$100,000 for work performed and an option to extend the

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contract period for up to two additional years. The contract included 32 unit-priced line items and one item for bond and insurance premiums, which was a lump-sum item. BBB was the overall low bidder, although its \$660,000 bid for the premiums was 33 times the agency's estimate and 36 times the next lowest bidder on the solicitation. Although BBB's bid was mathematically unbalanced, the contracting officer found that it was not materially unbalanced since BBB's offer would result in the lowest overall cost to the government. Specifically, BBB was evaluated at \$2,412,950, including its premium bid of \$660,000, while the next low bid was evaluated at \$3,079,875.

Clause I.5.15 of the contract, regarding payment for premiums provides:

"The total amount of premiums paid by the Contractor to obtain performance and payment bonds (and specified insurance) shall be paid at one time, together with the first progress payment under the first delivery order as provided in paragraph (c) of the "Payment Under Fixed-Price Construction Contracts" clause of this contract. Any bid amount in excess of the amount of premiums paid shall be paid upon expiration of the contract period." (Emphasis supplied.)

BBB paid \$52,404 for bond and insurance premiums. The bid amount in excess of the premiums is \$607,596, for which BBB now claims payment based on clause I.5.15.

The Field Solicitor of the Phoenix Field Office of the Department of the Interior contends that BBB's bid was mathematically and materially unbalanced and that award of the contract was improper. In addition, the Field Solicitor contends that BBB has not earned the bid amount in excess of the premiums paid and, therefore, should not be paid that amount. The Bureau's position is that BBB's bid, although mathematically unbalanced, was not materially unbalanced and notes that this determination was made by the contracting officer prior to award of the contract to BBB. The Bureau notes that on certain items in the contract BBB bid substantially lower than other bidders and lower than the government's estimate. For example, on item No. 18 for overhaul, BBB bid \$.01 per mile cubic yard, while the government estimate was \$.90. For 41,903.41 mile cubic yards, the quantity ordered, the government estimate was \$37,713.00; BBB was paid \$419.03. The Bureau contends that some of the costs of this and other such items are most likely included in the bond amount bid by BBB. The Bureau compared the amount paid to BBB for the work actually required and

performed to the prices of Barnard Construction, Inc., the second low bidder and found that BBB provided the lowest overall cost to the government even with payment of the bid amount in excess of the premiums paid.

The issue in this case is whether the Bureau is authorized to pay a contractor the bid amount in excess of the premiums paid under a lump-sum bid for bonds and insurance based on a clause in the contract which appears to provide for said payment.

It is clear that BBB intended that it be paid the excess amount of the bid over what it actually paid in premiums, and that the Bureau intended to pay that amount upon expiration of the contract period. For example, in a preaward letter dated September 18, 1986, BBB interpreted clause I.5.15 in the following manner:

"In the evaluation of these various provisions of the solicitation, the low bidder noticed that the Government had clearly invited the contractor to bid a larger amount under Bid Item 1 than might be required for the amount of premiums paid for the specified performance and payment bonds and specified insurance with the payment of the excess to be paid upon expiration of the contract period. Since the quantities of work to be required were indefinite, the low bidder concluded that it should place a significant share of its overhead and profit markup for the contract in this item in addition to its anticipated bond premium expenses, as the Government had invited it to do by the express wording of paragraph I.5.15."

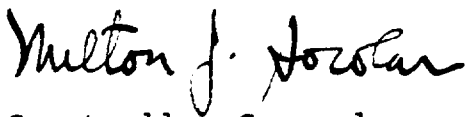
The contracting officer determined that BBB's bid was not materially unbalanced and, therefore, would result in the lowest overall cost to the government. The Bureau states that BBB included the costs and profit of several items that it bid low on in the bid for the bond amount. The Bureau contends that BBB's actual performance of the contract proves that BBB's offer resulted in the lowest overall cost to the government even with payment of the excess bid bond amount.

The Field Solicitor suggests that despite the intentions of the parties, their interpretation of clause I.5.15 is unreasonable. The Field Solicitor contends that while BBB has "earned" the cost of the bond premiums, it has not "earned" the excess of the amount bid. The plain language

of the clause, however, clearly does not support this position. The clause does state that the contractor shall be paid any bid amount in excess of the premiums paid when the contract expires. It does not state that the excess amount must be earned in relation to the costs of obtaining the bonds.

Where the language of a contract is unambiguous, contractual terms will be given their usual and ordinary meaning. American Science and Engineering Inc. v. United States, 229 Ct. Cl. 47 (1981). The interpretation proffered by the field solicitor is not what the parties intended and contracted for in this case. The Bureau cannot now change its interpretation of the clause. The Bureau accepted BBB's interpretation of the clause and the contract was performed in accordance with that interpretation. Moreover, since BBB's offer actually resulted in the lowest overall cost to the government in comparison to the second lowest bidder, there is evidence that part of BBB's costs and profits are included in the excess of the amount bid for premiums and, therefore, the government is paying for work performed.^{1/}

The Bureau is authorized to pay the claim.


for Comptroller General
of the United States

^{1/} Based on the work actually performed, BBB's costs were \$2,274,885.74, compared to \$2,609,836.32, based on the unit prices bid by the next low bidder.