



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Solar Foam Insulation

File: B-243059

Date: July 2, 1991

J.D. Lee for the protester.
Gilbert M. Chong, Esq., and Vicki O'Keefe, Esq., Department of the Navy, for the agency.
Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Award of an indefinite quantity contract for construction services under an invitation for bids (IFB) was improper where the IFB bid schedule was susceptible of two reasonable interpretations and the protester's bid could have been low under that firm's reasonable interpretation of the bid schedule.

DECISION

Solar Foam Insulation protests the award of a contract to Universal Coatings under invitation for bids (IFB) No. N62474-90-B-0867, issued by the Department of the Navy for various roof work at the Marine Corps Air Station, Yuma, Arizona. Solar contends that the awardee's low bid is the result of the awardee's mistaken interpretation of the IFB bid schedule, and therefore should be rejected.

We sustain the protest because the bid schedule is prejudicially ambiguous.

The IFB contemplated the award of an indefinite quantity construction contract for the application of urethane foam and protective, elastomeric coating,^{1/} and roofing repairs for 1 year or until the maximum order quantity of the contract is reached.^{2/} Contract work was to be ordered on a task order

^{1/} An "elastomeric coating" is a coating made of an elastic, rubber-like substance.

^{2/} The minimum contract quantity was stated to be \$28,000, and the maximum contract quantity was stated to be the total contract price based on the line items' estimated quantities.

basis and was required to be performed in accordance with detailed specifications set forth in the IFB. The IFB specifications provided that all new urethane foam applications must be covered with a protective, elastomeric coating and that "[a]ll repairs shall be coated and finished to match existing coating whether the remainder of the roof is to be recoated or not."

The IFB sought unit prices for 32 line items of work, including: (Items 1AA through 1AD) the application of urethane foam roofing to various square foot (SF) areas of roof; (Items 1AE through 1AV) the performance of specified items of work activities associated with the application of urethane foam--such as removal of insulation, application of primer, or installation of various hardware items; (Items 1AW through 1BB) the repair and replacement of various areas of roof designated by SF areas; and (Items 1BC through 1BH) the "preparation and recoating only" of various SF areas of roof.^{3/} Each line item specified an estimated quantity (e.g., SF), and each line item price was calculated by multiplying the applicable unit price by the estimated quantity. The total bid price was the sum of all the line item prices, and offerors were informed that award would be made to the responsive, responsible bidder with the lowest total price for all line items.

3/ Line items 1AW through 1BH were:

1AW	Spot repairs of less than 5 SF per area
1AX	Replacement of sections 5 to 25 SF
1AY	Replacement of sections 26 to 200 SF
1AZ	Replacement of sections 201 to 500 SF
1BA	Replacement of sections of 501 to 2,000 SF
1BB	Replacement of over 2,000 SF
1BC	Preparation and recoating only of less than 5 SF per area
1BD	Preparation and recoating only of sections 5 to 25 SF
1BE	Preparation and recoating only of sections 26 to 200 SF
1BF	Preparation and recoating only of sections 201 to 500 SF
1BG	Preparation and recoating only of sections 501 to 2,000 SF
1BH	Preparation and recoating only of sections over 2,000 SF

At bid opening, the Navy received seven bids, ranging from Universal's low bid of \$778,020 to \$4,306,126. The three lowest bids and the government estimate to perform the contract work were as follows:

Universal	\$ 778,020
Foam Experts Roofing	\$ 797,930
Solar	\$ 857,217
Government's Estimate	\$1,128,228

Because Foam Experts failed to provide the required bid bond with its bid, its bid was considered nonresponsive.

Solar, in reviewing Universal's bid at bid opening, questioned Universal's extremely low price for line items 1AW through 1BB, the roof repair/replacement line items. Universal's bid price for these line items was \$62,500, while Solar's bid price for these items was \$242,000. Solar states that Universal informed it that these line items included only roof repair or replacement work, but did not include the cost of applying the protective coating. On the basis of Universal's statements at bid opening, Solar protested to the agency the proposed award to Universal.

The Navy requested that Universal verify its bid. Universal verified its bid price of \$778,020 with the statement that line items 1AW through 1BB did not provide for the required protective coating. Universal explained that the coating would be accomplished under line items 1BC through 1BH, which provide for the "preparation and recoating only" of various SF areas of roof. On the basis of this explanation, the Navy awarded the contract to Universal and denied Solar's protest.

Solar then filed an agency-level protest objecting to the Navy's interpretation of the bid schedule. Solar argued that the roof repair and replacement work sought by line items 1AW through 1BB must include the protective coating, since this coating is required by the specifications, and that line items 1BC through 1BH provided for preparation and recoating only for areas where there was no roof repair or replacement. In response to this protest, the Navy again requested that Universal verify its understanding of the bid schedule requirements. Universal provided the following statement:

"It is our understanding that the line items [1AW through 1BB] . . . are to include the coating in addition to the foam repairs based upon the interpretation of one of your engineers. We agree to this interpretation being used for purposes of contract performance and will not qualify our bid accordingly.

"In the event that the project engineer should agree with our original interpretation as outlined in our letter of December 19, 1990 we believe you may allow the coating as a separate amount." (Emphasis added.)

Since the Navy then determined that Universal, by this statement, had agreed that line items 1AW through 1BB included the required coating, it denied Solar's second agency-level protest.^{4/} This protest to our Office followed.^{5/}

The Navy argues that we should dismiss Solar's protest because it concerns the Navy's affirmative determination of Universal's responsibility (where Solar has not alleged fraud, bad faith or the failure to properly apply definitive responsibility criteria) or a matter of contract administration. We do not agree that Solar is protesting Universal's ability to perform the contract or the awardee's intention to provide services that are not in compliance with the contract specifications. Rather, Solar claims that Universal is mistaken in its interpretation and pricing of the bid schedule, and that this mistake requires the rejection of Universal's bid.^{6/}

^{4/} We do not agree that the awardee, by this statement, unequivocally agreed that the Navy's new interpretation of the bid schedule was the correct one. In any event, it is clear from this statement that Universal had not priced its bid in accordance with the interpretation upon which it was agreeing with the agency and that it was reserving the right to pursue its original interpretation.

^{5/} Solar did not protest within 10 calendar days of the contract award, and performance of the contract has not been suspended pending our decision in this matter.

^{6/} We have held that a procuring agency may not accept a bid, even though it is responsive on its face, where, as here, the agency knows that the bid is based upon a mistake that will materially affect the bid price. Hanauer Mach. Works, B-196369, Mar. 6, 1980, 80-1 CPD ¶ 178; Donald Owen & Assocs., Inc., 63 Comp. Gen. 371 (1984), 84-1 CPD ¶ 525, aff'd, B-213160, Aug. 29, 1985, 85-2 CPD ¶ 243. This is so because acceptance of such an erroneous bid would be unfair to the bidder or to the other competitors. See Federal Acquisition Regulation § 14.406-3(g)(5); Martin Contracting, B-241229.2, Feb. 6, 1991, 91-1 CPD ¶ 121; Kumar Mechanical Inc., B-240433, Nov. 13, 1990, 90-2 CPD ¶ 391. Here, were we to accept Solar's view that the awardee's interpretation of the bid schedule was unreasonable, this bid mistake would result in

(continued...)

Solar contends that since the specifications expressly require that all roof repair and replacement work must be covered with a protective coating that matches the original protective coating, this coating work must be included under line items 1AW through 1BB that covers that work. In Solar's view, line items 1BC through 1BH specifically provide for "preparation and recoating only" (emphasis supplied), which is performed where there is no roof repair or replacement work performed.

The protester's interpretation of the bid schedule and specifications seems logical, since the specifications expressly state that all replacement work must be coated. Since the estimated SF for the "recoating only" line items is different from the estimated SF for the repair/replacement line items, it could be reasonably assumed that different portions of the roofs would be covered by the various line items, that many roof areas to be recoated will not be replaced, and that all replacement work (including recoating) would be covered in the same line item. The protester's view is also bolstered by the fact that line items 1AA through 1AC, which provide only for the application of urethane foam, must include the protective coating because the specifications require that the foam be coated and there is no other line item that provides for the application of protective coating over new urethane foam. Accordingly, if protective coating is implicitly included under the line items for the application of urethane foam, it is logical to conclude that protective coating is implicitly included under line items 1AW through 1BB for the repair and replacement work.

On the other hand, while the awardee agrees that the contractor was required to coat all roof repair and replacement work, it is of the view that this coating was to be performed under line items 1BC through 1BH and was not included under line items 1AW through 1BB. A review of the IFB also supports the awardee's interpretation, since the recoating and repair requirements are interspersed in the same specification and there are no instructions in the IFB as to which work falls under which line item. Since the estimated

6/ (...continued)

Universal's bid price being understated by \$85,500 (the amount Universal should have included in items 1AW through 1BB for the protective coating). Since Universal's bid is only \$79,197 lower than the protester's, Solar would have been the low bidder if the two bidders had priced their bids in the same fashion.

square footage of area to be recoated exceeds that to be repaired, it may be that a bidder could reasonably assume that the recoating incident to repair or replacement work was included in the recoating line items. While it is true that the IFB specification provided that coating always had to be performed on repair or replacement work, the bid schedule did not clearly identify where this required work was to be priced.

We do not find either of the party's interpretations of the bid schedule to be unreasonable and accordingly conclude that the bid schedule was ambiguous regarding where bidders were to price the required coating for roof repairs and replacement.^{7/} An ambiguity exists where two or more reasonable interpretations of a solicitation are possible when the solicitation is read as a whole. United States Elevator Corp., B-225625, Apr. 13, 1987, 87-1 CPD ¶ 401. Moreover, a party's particular interpretation need not be the most reasonable to have a finding of ambiguity; rather, a party need only show that its reading of the solicitation is reasonable and susceptible of the understanding it reached. Reflect-A-Life, Inc., B-232108.2, Sept. 29, 1989, 89-2 CPD ¶ 295.

Solar was clearly prejudiced by the ambiguity in the bid schedule. Solar priced item 1AW through 1BB under the reasonable assumption that these items included the required coating, and its prices for these items are much higher than Universal's prices.^{8/} The difference between the protester's and awardee's bids is \$79,197. If Universal's price for performing the coating over roof repairs and replacement is calculated by adding its coating prices to items 1AW through 1BB, as Solar had done, Universal's bid price would increase by \$85,500.^{9/} Thus, Solar's bid, under this calculation,

^{7/} The unclear nature of the bid schedule is confirmed by the Navy's changing interpretations and positions in response to Solar's protests.

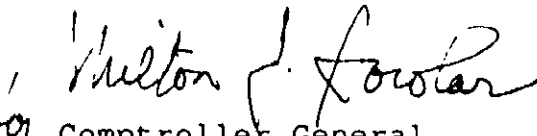
^{8/} We note that the prices of the second low bidder (Foam Experts) for items 1AW through 1BB are also much higher than Universal's prices for these items.

^{9/} We calculated the increase in Universal's bid price by taking the offered unit price for each of the "recoating only" line items, 1BC through 1BH, and multiplying that unit price by the estimated SF of the respective repair or replacement line items, 1AW through 1BB. The products of this calculation were then added together to arrive at the \$85,500 increase in Universal's price. For example, on line item 1BH Universal
(continued...)

could have been the low responsive bid, and the IFB was prejudicially ambiguous. Therefore, the award to Universal was improper.

We sustain the protest.

We recommend that the Navy terminate Universal's contract for the convenience of the government and resolicit for the remaining requirements under an amended IFB that clearly informs bidders as to what work is included under each line item of the bid schedule. In addition, Solar is entitled to recover its costs of filing and pursuing the protest. 4 C.F.R. § 21.6(d)(1) (1991). Solar should submit its claim for its protest costs directly to the agency. 4 C.F.R. § 21.6(e).


for Comptroller General
of the United States

9/ (...continued)
Bid \$.75 per square foot for "recoating only." We multiplied this figure by 80,000 SF, the estimated quantity of replacement work for line item 1BB, which resulted in an increase of \$60,000 in Universal's price for that line item.