



Comptroller General
of the United States

Washington, D.C. 20548

145246
Gorczycki

Decision

Matter of: Zeta Construction Company, Inc.

File: B-244672

Date: November 5, 1991

R.R. (Dick) Flowers, Jr., Esq., Fairfield, Farrow, Hunt, Reecer & Strotz, for the protester.
Douglas J. Thiesen, Esq., and Philip M. Schneider, Esq., Department of the Air Force, for the agency.
Henry J. Gorczycki and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. A bid must be rejected, even though responsive on its face, where, despite bidder's denial, it is apparent that a mistake has been made.
2. Cancellation of a solicitation is proper when no award can be made under the invitation for bids because no eligible bidder exists due to the rejection of the low bid submitted and the expiration of the remaining bids.

DECISION

Zeta Construction Company, Inc. protests the Department of the Air Force's cancellation of invitation for bids (IFB) No. F29650-90-B-0018 for the alteration of Unaccompanied Enlisted Personnel Housing (UEPH), Project No. MHMV87010100, at Kirtland Air Force Base, New Mexico.

We deny the protest.

The IFB requested bids on a basic item and three additive items. The third additive item, item No. 0004, requested bids on providing a medium bronze anodized finish on the metal roof instead of the baked enamel finish. The Air Force eliminated additive item No. 0004 via amendment No. 0005.

Bid opening was on September 7, 1990. Zeta submitted the low bid of \$3,500,620, which was \$993,360 below the next low bid and \$1,102,360 below the Air Force's estimate. On September 10, the contracting officer notified Zeta of the disparity between its bid and the other bids and the Air Force's estimate, and asked Zeta to verify its bid; Zeta did so on September 14.

Subsequent correspondence from Zeta concerning its view that specifications were inappropriate for the roof, together with Zeta's extremely low bid, suggested to the Air Force that Zeta might have omitted roofing work in its bid. The Air Force met with Zeta on November 7, 1990, to discuss the roofing requirements. Zeta assured the Air Force that its bid included the roofing work and was accurate.

On November 23, 1990, Zeta contacted the Air Force again suggesting the specifications were inappropriate. Zeta's letter specifically stated that the materials required were inappropriate for a flat roof. According to the Air Force, this was the first time that Zeta indicated it had not bid to construct a sloped roof. The Air Force asserts that a sloped roof is required to meet the IFB and Air Force requirements.

This project fell under a moratorium on military construction projects which extended through April 15, 1991. As a result, this project was given low priority status and the contracting officer took no action after Zeta's November 28 communication. The bid acceptance period was to expire on January 5, 1991. On January 4, on its own initiative, Zeta extended its bid. The Air Force subsequently requested bid extensions from the other bidders. Even after the moratorium expired, the Air Force still had not received a funding release for construction of the project. Thus, the Air Force took no action on the project.

On its own accord, Zeta repeatedly extended its bid. The Air Force reports that initially some other bidders extended their bids, but Zeta was the only one that continued extending its bid; all other bids have expired.

The Air Force met with Zeta on June 6, 1991. Zeta explained its understanding that the IFB requirement for a sloped roof was eliminated by amendment No. 0005, which deleted additive item No. 0004. The Air Force explained that the deletion of additive item No. 0004 was intended only to affect the type of finish on the roof and not the slope of the roof, and that a sloped roof was required to be furnished.

On June 10, 1991, Zeta again wrote the Air Force alleging that the IFB documents clearly required a flat roof for the basic bid item and a sloped roof for additive item No. 0004. Zeta conceded that a sloped roof was the preferred design and offered to add to its original bid the construction price of \$339,836.65 for a sloped roof, bringing its total bid to \$3,840,456.65.

On June 28, 1991, the Air Force canceled the IFB pursuant to the Federal Acquisition Regulation (FAR) §§ 14.404-1(c)(1), (6), (8), and (10).¹ The cancellation notice referenced the apparent mistake in Zeta's bid, and that Zeta's bid was seriously out of line with the other bids and the government estimate.

Zeta then protested to our Office, requesting that the Air Force reinstate the IFB and make the award to Zeta, the low bidder. In support of this request, Zeta argues that its interpretation of the roofing requirement is the only reasonable reading of the IFB, and it did not make a mistake in bidding a flat roof since this was what the IFB, as amended, required. Zeta requests that the Air Force either permit Zeta to recalculate its bid to include construction of a sloped roof, or award the contract to Zeta under its original bid and permit it to negotiate the changes needed to supply a sloped roof after it receives the award.

¹FAR § 14.404-1 provides:

"Cancellation of invitations after opening.

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(c) Invitations may be canceled and all bids rejected before award but after opening when, consistent with subparagraph (a)(1) above, the agency head determines in writing that--

(1) Inadequate or ambiguous specifications were cited in the invitation;

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(6) All otherwise acceptable bids received are at unreasonable prices, or only one bid is received and the contracting officer cannot determine the reasonableness of the bid price;

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(8) No responsive bid has been received from a responsible bidder;

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(10) For other reasons, cancellation is clearly in the public's interest."

The basic bid item in the IFB stated:

"Perform all work to renovate one fully operational UEPH Facility complete, in accordance with the specifications and drawings for project MHMV87010100, as referenced in Section C excluding Sections identified in [contract line item numbers (CLIN)] 0002 through 0004."

Zeta interpreted the phrase, "excluding sections identified in a CLINs 0002 through 0004," to mean that the sections referenced in each additive item would only be performed if the respective additive item were performed. Additive item No. 0004 stated:

"Perform work for medium bronze anodized roofing instead of 20 year baked enamel in accordance with Section 05300 of the specifications and drawings for project MHMV 87010100 Section C hereof."

Zeta read amendment No. 0005 as eliminating additive item No. 0004, including section 05300 referenced therein. Section 05300 gave the specifications for metal roof decking. Zeta alleges that section 05300 was needed for a sloped roof, and concluded that additive item No. 0004 was a requirement for a sloped roof. Since additive item No. 0004 and, allegedly, section 05300 were deleted by amendment No. 0005, Zeta concluded that the Air Force's requirement for a sloped roof was canceled. Zeta's bid for renovating the UEPH included building a new flat roof.

The Air Force asserts that the basic bid item required a sloped metal roof, that additive item No. 0004 only requested bids on a more durable anodized finish on that metal roof, and the reference to section 05300 in additive item No. 0004 was an obvious error. The Air Force claims that section 05300 was a reference for specifications on the underlayment for the concrete decks, and had no relationship to the sloped roof requirement. Thus, the Air Force asserts that the deletion of additive item No. 0004 did not modify the IFB requirement that the roof be sloped.

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. Martin Contracting, B-241229.2, Feb. 6, 1991, 91-1 CPD ¶ 121. Applying this standard, we find that Zeta's interpretation was clearly unreasonable.

The basic bid item called for renovation to the UEPH "in accordance with the specifications and drawings for project MHMV87010100." Therefore, we must read the solicitation in a manner that gives full effect to the drawings and specifications for the project. Although the bidding schedule and specifications make no reference to the shape of the roof, the drawings clearly call for a sloped roof. Specifically, drawings A25 and A33 show that the alterations will require removal of the existing flat roof and construction of a sloping, standing seam metal roof.

Additive item No. 0004 requested bids on an anodized finish instead of a baked enamel finish. The reference to section 05300 in additive item No. 0004 was an obvious error since this section had nothing to do with the finish on the roof. Even if it were assumed that section 05300 was properly referenced in additive item No. 0004, it is not reasonable to assume, from reading the IFB as a whole, that removal of additive item No. 0004 eliminated section 05300 from the solicitation. Section 05300 provides specifications for roof decking, which, from our review of the drawings, are to be used beneath the roof to tie joists together. It is not disputed that roof decking is not roofing. Since additive item No. 0004 calls for an anodized finish to roofing (not roof decking), it is apparent that elimination of additive item No. 0004 meant that the Air Force no longer wanted bids on the anodized finish and could not be reasonably interpreted as eliminating all roof decking or changing the shape of the roof to flat.

Zeta's interpretation that additive item No. 0004 called for bids to provide a sloped roof, and that amendment No. 0005 eliminated the sloped roof requirement is not reasonable. The amendment did not eliminate the plans for the project, and the plans provided construction details for a sloped roof. No details on the construction of a flat roof were provided in the IFB. Therefore, the only reasonable interpretation of the IFB, as amended, by deleting additive item No. 0004, is that the Air Force no longer wanted bids on the alternative anodized finish on the roof, but that the sloped metal standing seam roof was still required.²

Since the solicitation required a sloped roof, a bid providing for a flat roof would be in error. Zeta's protest clearly shows that its bid was based on a mistaken interpretation of the roof construction. Also, its bid

²That all of the other five bidders submitted bids calculated on a sloped roof requirement lends support to this conclusion.

price was considerably less than both the other bids and the government estimate for the work. In these circumstances, even though Zeta's bid was responsive on its face, the bid must be rejected pursuant to FAR § 14.406-3(g)(5)(ii), concerning mistakes in bids disclosed before award. Martin Contracting, supra; Mullins Protective Servs., Inc., B-208674, Dec. 21, 1982, 82-2 CPD ¶ 561.

Cancellation of an IFB is proper, where, as here, no award can be made under the IFB because no eligible bidder exists due to the rejection of the low bid and the expiration of the remaining bids submitted. See Gott Corp., B-222586; B-223260, Aug. 5, 1986, 86-2 CPD ¶ 154.


Even if we could find that Zeta's interpretation of the roof requirement was correct, cancellation of the solicitation would still be appropriate because an award based on Zeta's interpretation would not provide for the Air Force's actual needs. FAR § 14.404-1(c)(1) provides that an IFB may be canceled after bid opening where inadequate specifications were cited, and we generally consider such a cancellation appropriate where award under the solicitation would not serve the government's actual minimum needs. Holk Dev., Inc., B-236765.2, Jan. 18, 1990, 90-1 CPD ¶ 65; Instrument & Controls Serv. Co.--Recon., B-231934.2, Nov. 4, 1988, 88-2 CPD ¶ 441. Not only is it clear that the Air Force actually required a sloped roof on this building, but Zeta has acknowledged that a sloped roof is the preferred design.

Zeta argues that if the Air Force wants a sloped roof, Zeta should be permitted to recalculate its bid to include such construction. 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. General Elevator Co., Inc., 57 Comp. Gen. 257 (1978), 78-1 CPD ¶ 81; L.F. Leiker Constr. Co., Inc., B-238496, May 4, 1990, 90-1 CPD ¶ 453; Amtech Elevator Servs., B-216067, Jan. 11, 1985, 85-1 CPD ¶ 31. Since Zeta's protest clearly shows that it did not intend to bid on a sloped roof, recalculation is not an available option here.

Zeta also argues that this matter could be addressed in a modification in the contract after award. The integrity of the competitive procurement system precludes the Air Force from awarding the contract to Zeta with the intent of making a material modification to the requirements soon after the award. Zwick Energy Research Org., Inc., B-237520.3, Jan. 25, 1991, 91-1 CPD ¶ 72; Butler, Holland and Scales, B-234985, July 28, 1989, 89-2 CPD ¶ 89.

Finally, Zeta claims its bid preparation costs and the costs of pursuing its protest. However, since the Air Force violated no statute or regulation, Zeta is not entitled to reimbursement of such costs. See 4 C.F.R. § 21.6(d) (1991); Star Brite Constr. Co., Inc., B-241741, Feb. 1, 1991, 91-1 CPD ¶ 105.

The protest is denied.


James F. Hinchman
General Counsel