



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** United Materials, Inc.

**File:** B-253282

**Date:** September 8, 1993

Ronald L. Roberts, Esq., Mattox & Associates, P.C., for the protester.

Terry LaVelle for Arapahoe Roofing & Sheet Metal, Inc., an interested party.

Tony M. Karpowicz, Department of Housing and Urban Development, for the agency.

Catherine M. Evans, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Minimum price term did not qualify bid and thereby render it nonresponsive where minimum price applied only to indefinite quantity work, the price for that work was not included in the price evaluation, and the ultimate price was to be definitized through negotiations at the time a specific requirement arose under the contract.

### DECISION

United Materials, Inc. protests the award of a contract to Arapahoe Roofing and Sheet Metal, Inc. under invitation for bids (IFB) No. S03-93-101, issued by the Department of Housing and Urban Development (HUD) for reroofing of two HUD-owned multi-family housing projects in Denver, Colorado.

We deny the protest.

The IFB contemplated the award of a firm, fixed-price contract for remodeling and demolition of exterior roof surfaces for two garden apartment complexes. Section IV of the IFB's bid schedule required bidders to submit a line item price for the work for each of the two projects. The IFB's statement of work specified that the work included replacement of approximately 30 percent of fascias and trim boards, and also provided that bid prices were to account for the replacement of 200 square feet of decking per building (the projects consist of 14 and 17 buildings, respectively). Section M of the IFB provided that bids would be evaluated based on the total price for these items.

In addition to the two fixed-price items, the bid schedule at section V requested unit prices (per linear foot or square foot) for certain indefinite quantity items: removal and replacement of two types of trim (items A.1 and A.2) and two types of decking (asbestos-contaminated and non-contaminated, items B and C). The square-foot prices for decking were based on a 4 square foot area. To distinguish the fixed-price items in section IV from the indefinite quantity items in section V, the IFB provided in section VI that the cost of removing and replacing estimated quantities of fascia and decking was to be included in the fixed prices in section IV of the bid schedule, and that payment for any fascia or decking replacement beyond the estimated amounts would be negotiated by the contracting officer. Section M provided that the unit prices in section V would be evaluated only for reasonableness; the ultimate price for any indefinite quantity work was to be negotiated when the work arose.

At the March 1, 1993 bid opening, Arapahoe submitted the apparent low bid of \$753,564; United's bid was second low at \$796,420 (two lower bids were rejected as nonresponsive). The contract specialist who conducted the bid opening noted that Arapahoe appeared to have qualified its bid by specifying a minimum order for each of the two unit prices in section V for additional replacement decking. For example, in item V.B, where the IFB requested a square foot price for removing and replacing asbestos-contaminated roofing, Arapahoe inserted a price of \$6 and then added the language "with a \$300 minimum in any one area." Similarly, Arapahoe offered a unit price of \$5 per square foot for item V.C, removal and replacement of non-contaminated roofing, and then added "with a \$200 minimum in any one area."

After bid opening, United wrote to the contracting officer to request that no award be made to Arapahoe because the minimum price conditions in its bid rendered the bid nonresponsive. The contracting officer verbally informed United that he considered Arapahoe's bid responsive, but that he was permitting Arapahoe to remove the price qualifications pursuant to Federal Acquisition Regulation § 14.402-2(e), which provides for removal of objectionable provisions that do not go to the substance of the bid. United then filed an agency-level protest against the proposed award. Upon receiving the agency's letter denying the protest, Arapahoe filed this protest in our Office.

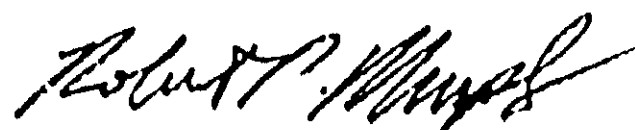
United contends that Arapahoe's bid should have been rejected as nonresponsive because the specified minimum dollar amounts under section V qualified the bid price.

We do not agree. As indicated, the IFB provided for calculating the award price based solely on the fixed prices

under section V, Arapahoe submitted the low fixed price bid with no minimums. The prices under section V were not included in the price evaluation, but were reviewed only for reasonableness. This implicitly was because the section V work was so uncertain (and, indeed, potentially nonexistent), that the price for it was too uncertain to include in the evaluated price. Given this uncertainty, and the fact that the section V prices would be definitized only through negotiations during performance, Arapahoe's stating a minimum price for the section V work, in our view, cannot be said to have materially qualified the bid price.

Nor do we think the agency improperly determined that Arapahoe's indefinite quantity prices were reasonable. While there may be circumstances under which Arapahoe's minimum price could increase the cost to the government, the agency was not compelled to assume that extreme circumstances (i.e., that numerous areas of section V work would arise such that Arapahoe's total performance price no longer would be low) would occur when conducting its section V price reasonableness review. Rather, in the absence of guidelines in the IFB to the contrary, we think the agency properly could factor into its review considerations such as the possibility that little or no section V work may be required, so that Arapahoe's approximate \$43,000 advantage on the fixed price work likely would not be eliminated.

The protest is denied.

  
for James F. Hinchman  
General Counsel