



Comptroller General
of the United States
Washington, D.C. 20548

1117159

Decision

Matter of: Norris Building Company, Inc.
File: B-253621
Date: September 17, 1993

J. Lister Hubbard, Esq., Capell, Howard, Knabe & Cobbs, for the protester.
Gregory H. Petkoff, Esq., and Rod Wolthoff, Esq., Department of the Air Force, for the agency.
Daniel I. Gordon, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably treated a subline item as part of the base bid item for purposes of evaluating bidders' prices, even though not clearly so labeled, where the solicitation as a whole made clear that the subline item was intended as part of the base bid item, and the protester's alternative interpretation of the solicitation is not reasonable.

DECISION

Norris Building Company, Inc. protests the award of a contract to John Holtman and Sons, Inc. under invitation for bids (IFB) No. F01600-92-BA029, issued by the Department of the Air Force. Norris contends that award to Holtman was inconsistent with the terms of the solicitation.

We deny the protest.

The IFB was issued on August 14, 1992, by the Operational Contracting Office, Maxwell Air Force Base, for the upgrade of nine units of senior officer quarters. The IFB anticipated award of a fixed-price contract.

The IFB listed 10 line items, "Bid Item I" through "Bid Item X." Bid Item I, identified as "[Base Bid]," covered all plant, labor, materials, and equipment for the upgrade

of the nine officers quarters "except items included in Additive Items" 1 through 9. "Bid Item II" through "Bid Item X" were identified as "Additive #1" through "Additive #9," respectively. The IFB descriptions of the "additives," which were further identified by brief descriptions of the work covered in square brackets, indicated that each covered potential additional work.¹

The IFB incorporated Defense Federal Acquisition Regulation Supplement (DFARS) § 252.236-7007, "Additive or Deductive Items," which provides, in pertinent part, as follows:

"(a) The low offeror and the items to be awarded shall be determined as follows--

"(1) Prior to the opening of bids, the Government will determine the amount of funds available for the project.

"(2) The low offeror shall be the Offeror that--

"(i) Is otherwise eligible for award; and

"(ii) Offers the lowest aggregate amount for the first or base bid item, plus or minus (in the order stated in the list of priorities in the bid schedule) those additive or deductive items that provide the most features within the funds determined available."

Pursuant to this DFARS provision, the IFB set forth the order of priority which would be used for determining the low bid. The order of priority essentially listed the bid items in their numerical order: Bid Item I, Bid Item II (referred to as Additive 1), Bid Item III (Additive 2), and so forth.

¹For example, "Additive #2 [Vanity Tops]" (which was Bid Item III) provided for use of cultured marble instead of plastic laminate in the vanity tops in the bathrooms; and "Additive #6 [Refinish Floors]" (Bid Item VII) provided for the refinishing of the existing oak floors instead of installation of carpeting.

On February 19, 1993, the Air Force issued Amendment 0002, which changed the IFB in a number of ways relevant to the protest. Bid Item I was divided into Bid Item I, which remained labeled and defined precisely as before, and Bid Item IA, which covered the removal of asbestos in the nine officers quarters being upgraded. Each of the two parts called for insertion of a separate bid price for "one job, lump sum." Bid Item IA did not include a caption in square brackets (comparable to the "[Base Bid]" title listed above Bid Item I or "[Vanity Tops]" above Bid Item III).

Amendment 0002 also amended the order of priority, for purposes of DFARS § 252.236-7007, to list "Bid Item I and Bid Item IA" (instead of simply "Bid Item I") as the first priority. In addition, a note was added to the IFB stating that "Bid Item I and Bid Item IA shall be awarded in the aggregate."

The amended IFB also included technical specifications for the asbestos removal work. The technical specifications identified, for each of the nine units, an estimated 700 linear feet of piping with asbestos or other insulation to be removed and an estimated 1,400 square feet of ground in crawl space where "some clean up" (apparently referring to asbestos removal) would be needed. Multiplying these estimates by the nine units indicates overall estimates of 6,300 linear feet for the piping work and 12,600 square feet for the crawl space work.

Eleven days later, on March 2, 1993, the agency issued Amendment 0003, which made several additional changes relevant here. The schedule of bid items was further modified, and now subdivided the asbestos work between Bid Item IA, for the removal of asbestos from piping, and Bid Item IB, for removal of asbestos in crawl space. As with Bid Item IA, the new line item bore no caption in square brackets identifying it either as a base bid item or as one of the additives. The pricing for the two subitems changed from the "one job, lump sum" method (which was retained for Bid Item I) to unit pricing. For Bid Item IA, bidders were to fill in a cost per linear foot for the estimated quantity of 6,300 linear feet, as well as the total cost for that quantity; while for Bid Item IB, bidders were to offer a cost per square foot, as well as a total cost, for the estimated 12,600 square feet.

Amendment 0003 did not change the order of priority, which continued to list "Bid Item I and Bid Item IA" as the first priority and the nine additives as the remaining priorities. That is, the new Bid Item IB appeared nowhere in the order of priorities. Similarly, Amendment 0003 did not modify the note stating that Bid Item I and Bid Item IA would be awarded in the aggregate.

Three bids were received and opened on March 23, 1993. The prices bid for Bid Items I, IA, and IB, which are the only items relevant to the protest, were as follows:

	Norris	Holtman	Bidder C
Item I	\$883,228	\$881,213	\$995,200
Item IA	\$55,125	\$57,141	\$56,684
Item IB	\$82,656	\$22,050	\$33,264
Total for I, IA & IB	\$1,021,009	\$960,404	\$1,085,148

Viewing Bid Items I, IA, and IB as components of the base bid item, the contracting officer added each bidder's prices for those three items to calculate the bids for the base item. On that basis, Norris's base bid was found to be \$1,021,009, Holtman's was \$960,404, and Bidder C's was \$1,085,148.

Because there were only \$948,000 in funds available at the time, the contracting officer was barred, under DFARS § 252.236-7007, from making award for any of the additives, but instead could award a contract solely for the base bid item. Based on his calculation of the bidders' base bids, the contracting officer determined that Holtman's bid was low and award was made to that company.

The gravamen of Norris's protest is that Bid Item IB was not part of the base bid item. If that contention is well-founded, then award could properly have been made only for Bid Items I and IA, which the IFB stated would be awarded together, because adding the price for Bid Item IB would lead to the cumulative bid prices for all bidders exceeding the \$948,000 in available funds. For Bid Items I and IA alone, Norris's bid was low.

Norris supports its argument that Bid Item IB was not part of the base bid by noting that the IFB, as amended, did not include Bid Item IB in the first position in the order of priority set forth for purposes of DFARS § 252.236-7007. In addition, Norris argues that the asbestos removal work covered by Bid Item IB (removal of asbestos from crawl space under the housing) can be performed separately from the overall upgrading of the housing under Bid Items I and IA, and that work comparable to that covered by Bid Item IB has sometimes been performed in the past by government employees, even when the remaining upgrading work was performed by an outside contractor.

The agency responds that a clerical error was the cause for the lack of a reference in Amendment 0003 to Bid Item IB in the order of priority and in the note describing which bid items would be awarded in the aggregate. In the agency's view, the IFB nonetheless made unambiguously clear that Bid Item IB was a subpart of the base bid item, since the bracketed words "Base Bid" were followed in the IFB schedule of bid items by the listings for Bid Items I, IA, and IB, while each of the additives was accompanied by square bracketed descriptions of the tasks covered by that item.

In addition, the agency asserts that Norris was plainly aware, at the time it prepared its bid, of the clerical error in Amendment 0003 and decided to take advantage of it by bidding a disproportionately high price for Bid Item IB, which it anticipated would not be considered in the determination of low price: Norris's bid of \$82,656 for Item IB was more than double either of the other two bidders' price for that item. The agency contends that Norris had an obligation to seek clarification of what Norris recognized to be a patent ambiguity in the IFB.

The sole issue in this protest is whether Bid Item IB was properly treated by the agency as part of the base bid item for price evaluation purposes. Although, prior to bid opening, available funding was insufficient to cover the lowest price offered for that entire base bid item, award was nevertheless permitted for that item, if funds could be obtained. Utley-James, Inc., B-198406, June 16, 1980, 80-1 CPD ¶ 417. The protester's case is founded on absence of any reference to Bid Item IB in the note stating that Bid Items I and IA would be awarded in the aggregate or in the order of priority listing Bid Items I and IA as the highest priority.

Solicitations must be construed in a manner which is reasonable and which gives effect to all of their provisions. See Lithos Restoration, Ltd., 71 Comp. Gen. 367 (1992), 92-1 CPD ¶ 379. Here, the only reasonable interpretation of the two IFB provisions mentioning Bid Item IA (the order of priority and the note about award in the aggregate) is that those provisions refer to the asbestos removal work as a whole--including Bid Item IB as well as IA. That is, the IFB indicated that the base bid item would include the basic upgrade work described in Bid Item I as well as all asbestos removal work, and bidders were advised that the basic upgrade work and the asbestos removal work would be awarded together. At the time the note and the order of priority were added to the IFB through Amendment 0002, Bid Item IA covered all asbestos removal

work. While Bid Item IA was later subdivided into IA and IB, it is apparent that the agency inadvertently failed to update the references to Bid Item IA in the two provisions at issue.²

The alternative interpretation propounded by Norris--that Bid Item IB was not part of the base bid work--lacks consistency and fails to give effect to all of the IFB's provisions. Even if Norris is correct that the crawl space asbestos removal covered by Bid Item IB is not integral to the upgrade work covered by Bid Item I and that government employees could perform that work in-house, those assertions leave unexplained the IFB's failure to mention Bid Item IB in the order of priorities. If the agency had decided that the work covered by Bid Item IB did not need to be awarded together with Bid Items I and IA, as Norris argues, then Bid Item IB should have been listed as a lower priority. Yet, unlike every other line item, Bid Item IB does not appear anywhere in the order of priority.

Moreover, Norris's interpretation would suggest that Bid Item IB should have been identified in Amendment 0003 as an additive, which would be included in the contract only if the prices bid were low enough to be paid from available funding. Bid Item IB, however, was not labeled as an additive and instead, under Norris's interpretation, was

²We note that Norris does not dispute the agency's contention that the protester must have been aware, in preparing its bid, of the defect in the IFB. Indeed, Norris appears to concede that it viewed the solicitation as containing a patent ambiguity regarding the status of Bid Item IB. Norris contends, by way of explanation, that the contracting activity had previously indicated its unwillingness to resolve IFB ambiguities, and that inquiring into the handling of Bid Item IB therefore appeared futile. To the extent that Norris perceived a patent ambiguity in the IFB concerning the evaluation of Bid Item IB prior to bid opening, that allegation, to be timely raised, had to be raised in a protest filed with our Office before bid opening. 4 C.F.R. § 21.2(a)(1) (1993). Norris's claim that the contracting personnel might have been unwilling to resolve the solicitation ambiguity does not provide a basis to waive our Office's timeliness rules, and the protester's challenge to that ambiguity in a post-award protest is thus untimely.

neither part of the base bid nor an additive. That interpretation fails to give effect to the IFB's categorization of line items as either base bid items or additives.³

Accordingly, the only reasonable interpretation of the IFB is that Bid Item IB was part of the base bid, and the Air Force properly evaluated bids on the basis of the prices offered for the total of Bid Items I, IA, and IB.

The protest is denied.



James F. Hinchman
General Counsel

³Further, Norris fails to address the fact that every line item bore a square-bracketed caption except Bid Items IA and IB, which appeared to be covered by the "[Base Bid]" heading above Bid Item I. Norris does not dispute that this heading applied to Bid Item IA, and we see no reason that it would not cover Bid Item IB as well.