



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: B-G Mechanical Service, Inc.

File: B-265782

Date: December 27, 1995

Kevin F. Morin, Esq., Gordon, Muir and Foley, for the protester.

Scarlett D. Orenstein, Esq., General Services Administration, for the agency.

Paula A. Williams, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly rejected bid as nonresponsive where statement included on the protester's bid schedule rendered the bid ambiguous as to price.

DECISION

B-G Mechanical Service, Inc. protests the rejection of its bid as nonresponsive and the award of a contract to All State Boiler Work, Inc. under invitation for bids (IFB) No. GS-01P-95-BZC-0021, issued by the General Services Administration (GSA) to replace a cooling tower and to modify the heating, ventilation, and air conditioning (HVAC) system at the federal building in New Haven, Connecticut. GSA rejected the bid as nonresponsive because B-G's bid schedule included a statement which the agency concluded was inconsistent with the terms of the IFB.

We deny the protest.

When it was issued, the IFB sought lump-sum bids for all of the required work including the repair and replacement of thermostats and variable air volume (VAV) equipment. The VAV work as described in the specifications and drawings requires the contractor to remove the ceilings in order to access the VAV equipment, then replace and repair the ceilings, as necessary.¹

¹There are three types of ceilings in the building: acoustical tile, concealed spline tile, and plaster ceilings. Acoustical tile and concealed spline tile ceilings require removal and replacement to access the VAV equipment. Plaster ceilings require selective demolition to gain access to equipment above the ceiling and patching and painting upon completion of work.

Amendment 1 to the solicitation inserted a new pricing schedule which instructed bidders to submit unit prices for thermostats and VAVs in addition to a lump-sum bid. Under the blank space for the lump-sum bid, the IFB included the caution: "THE LUMP SUM BID SHALL NOT INCLUDE THE AMOUNTS FOR UNIT-PRICED ITEMS LISTED BELOW." Under the unit-priced items, the amendment included blanks for four prices: thermostats and three types of VAVs, with estimated quantities specified for each. The scope of work for thermostat replacement and VAV work was not changed by this amendment.

GSA received eight bids; B-G submitted the low bid of \$430,825. B-G's bid included the following statement on its bid schedule, below the VAV unit prices: "CEILING DEMO [demolition], REMOVAL & REPAIR NOT INCLUDED IN VAV TERMINAL UNIT PRICING." By letter of June 20, the contracting officer requested an explanation of this statement to which the protester responded by letters dated June 23 and 28. B-G explained that the firm "wanted to qualify what our pricing did not include" because the costs associated with VAV ceiling work were included in the firm's lump-sum price. Nevertheless, the contracting officer concluded that the language inserted in the protester's bid excluded required ceiling work from the unit priced items and thus required rejection of the bid as nonresponsive. GSA subsequently made award to All State, which had submitted the next lowest bid of \$448,150. This protest to our Office followed an agency-level protest which the contracting officer denied.

A bid must be responsive to be considered for award, which means that the bid must be an offer to perform, without exception, the exact thing called for in the solicitation and, upon acceptance, will bind the contractor to perform in accordance with the material terms and conditions of the IFB. Stay, Inc., B-237073, Dec. 22, 1989, 89-2 CPD ¶ 586. Responsiveness is determined at the time of bid opening from the face of the bid documents. Where a bidder provides information in its bid that modifies or takes exception to the IFB requirements, the bid must be rejected as nonresponsive. Southwest Marine, Inc., B-247639, May 12, 1992, 92-1 CPD ¶ 442; Bishop Contractors, Inc., B-246526, Dec. 17, 1991, 91-2 CPD ¶ 555.

The protester contends that its bid was responsive to the solicitation requirements and should not have been rejected. According to B-G, the solicitation as originally issued and as amended did not require bidders to include ceiling demolition and repair costs in the VAV unit prices. B-G maintains that the IFB description of the unit-priced line items did not include any reference to ceiling demolition or repair work, but rather simply required that those unit prices include the cost of the VAV equipment being replaced. As a result, the protester insists that it properly included the costs for ceiling demolition and repair in the lump-sum portion of its bid. According to the protester, inclusion of these costs in its lump-sum bid was consistent with the specifications, which called for ceiling demolition and repair

work to be done in conjunction with the replacement and renovation of other HVAC system components, not just in conjunction with the VAV equipment.

We think the amended solicitation envisioned the unit prices as including the costs of all work associated with the repair and replacement of VAV equipment.

Attachment 2 of amendment 1 stated that unit prices were to include "all necessary material" and referred bidders "to individual Specification Sections for construction activities requiring the establishment of unit prices." Specifically, section 02070 entitled "Selective Demolition," section 09200 entitled "Lath and Plaster," section 09510 entitled "Acoustical Ceilings" and section 09900 entitled "Painting," describe the construction activities required to repair and replace existing VAV equipment. Therefore, we think these references to "all necessary material" and "construction activities" reasonably reflect the agency's intention that the VAV unit prices were not to be limited to the cost of the VAV units. We note in this regard that since the VAV terminals are physically located above ceilings in the federal building, it would be impossible for the contractor "to replace" those units without removing and replacing ceilings. Thus, the cost "to replace" the existing VAV units logically would include all costs associated with replacing those units, including demolition, removal and repair.²

In any event, by including the statement on its bid schedule that these costs were excluded from its unit pricing for VAV work, B-G called into question whether it had, in fact, included these costs in its bid as submitted. Under these circumstances, the agency properly could conclude that the protester's bid was

²As explained, amendment No. 1 cautioned that "THE LUMP SUM BID SHALL NOT INCLUDE THE AMOUNTS FOR UNIT-PRICED ITEMS LISTED BELOW," indicating that bidders were not permitted to include under the lump-sum bid any work that was required to be priced under the unit-priced items. Consequently, since, as we explained above, ceiling demolition, removal and repair were required to be included under the unit-priced items, contrary to B-G's assertion, ceiling demolition and repair could not be included under its lump-sum bid.

ambiguous as to price and we therefore have no reason to question the rejection of B-G's bid as nonresponsive.³ See Wasteco Container Servs., Inc., B-240309, Nov. 7, 1990, 90-2 CPD ¶ 372.

The protest is denied.

Comptroller General
of the United States

³It is irrelevant that the contracting officer asked the protester to clarify its bid because a bidder is not permitted to clarify information affecting a material requirement after bid opening. See Basil Equip. Corp., B-237335, Feb. 13, 1990, 90-1 CPD ¶ 187.