



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Southern Maryland Restoration, Inc.

File: B-270125

Date: January 18, 1996

Andres Santos for the protester.

Douglas L. Patin, Esq., Spriggs & Hollingsworth, for Barefoot & Company, Inc., an interested party.

J.J. Cox, Esq., and Madeline Shay, Esq., Department of the Army, for the agency.

Tania L. Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Post-award protest by apparent low bidder whose bid was rejected and who verified bid price by asserting that the solicitation did not require removal of lead-based paint from wooden windows to be repaired or replaced is denied since protester's interpretation would not give effect to the solicitation's requirement, when read as a whole, for the removal of lead-based paint from these wooden windows.

DECISION

Southern Maryland Restoration, Inc. (SMR) protests the award of a contract to Barefoot & Company, Inc. under invitation for bids (IFB) No. DACA31-95-B-0047, issued by the Army Corps of Engineers, Baltimore District, for window and pointing requirements at Fort Belvoir, Virginia. The protester contends that the Army improperly rejected its apparent low bid.

We deny the protest.

The IFB anticipated award of a fixed-price requirements contract for these services, to be performed over 1 base year with up to 2 option years. The bid schedule advised prospective bidders that the contractor was to provide all plant, labor, materials, and equipment necessary to perform the work in accordance with contract specifications, and that unit prices were to encompass all elements of performance to be accomplished under each line item.

Contract line item No. (CLIN) 0001, "Repair of Window Unit," required the contractor to repair 1,267 window units over the 3-year contract period. The description under this CLIN stated that "[r]epair of wood window shall be in accordance with referenced [construction specification] sections and include but

shall not be limited to: . . . paint removal" One of the construction specification sections referenced under this CLIN was entitled "Lead-Based Paint (LBP) Abatement and Disposal." This section listed general lead-based paint abatement and disposal requirements, such as submittals, quality assurance, safety and health regulatory requirements, and equipment and materials, as well as requirements related to the actual execution of the work.¹

Bid opening was on May 3, 1995. SMR submitted the low bid of \$997,939, which was approximately 55 percent below Barefoot's next low bid of \$2,236,720,² and 70 percent below the government estimate of \$3,307,391. By letter of May 9, the Army asked SMR to review and verify its bid in light of these disparities. SMR verified its bid the next day, stating that its unit prices were "in compliance with [its] interpretation of the plain language of the specifications."

The Army was concerned that SMR may not have understood the requirements and met with the firm on June 9 to explore this possibility. The Army specifically asked SMR's representatives what it meant when it stated that it had complied with its interpretation of the specifications. SMR asserted that its bid had not included any amount for removal of lead-based paint because it believed that the specifications did not state that the windows contained lead-based paint. The Army disagreed with this interpretation, and advised the bidder that it could claim a mistake in bid.

By letter dated June 16, SMR again verified its bid without claiming a mistake, and reasserted its view that the solicitation did not require bidders to include the costs for lead abatement for all of the windows in the schedule. SMR pointed to one paragraph within the lead-based paint section of the construction specification which stated that "[a] space by space inspection shall be conducted with the contracting officer. A written inventory shall be prepared that identifies the LBP containing surfaces." SMR queried why this inventory would be necessary if all windows are known to require lead-based paint abatement procedures.

¹CLIN No. 0002, "Replacement of Window Unit," also required paint removal and referenced the lead-based paint abatement and disposal section of the construction specification.

²The remaining three bids were in the amounts of \$2,608,933, \$2,933,185, and \$3,538,737.

The contracting officer asked the District's legal counsel to review the IFB and provide advice concerning the presence of any ambiguities. Legal counsel advised that the Army could reject SMR's bid under Federal Acquisition Regulation (FAR) § 14.406-3(g)(5)(ii)³ because the firm had misinterpreted the solicitation's requirements regarding lead-based paint abatement. However, she stated that the IFB contained other ambiguities associated with this section of the construction specification, and recommended that the solicitation be canceled. The contracting officer did so on June 29.

Barefoot subsequently filed a protest in this Office, arguing that the Army did not have a compelling reason to cancel the solicitation in accordance with FAR § 14.404-1(a)(1). Barefoot asserted that the Army erroneously determined that the IFB contained ambiguous specifications or that, to the extent the specifications were ambiguous, they did not materially affect the pricing.

The Army submitted its report on August 10, asking our Office to deny the protest based upon its view that the IFB contained the ambiguities identified by its legal counsel. In the meantime, the Army reissued the requirement under IFB No. DACA31-95-B-0136, with the lead-based paint specifications slightly revised. On August 28, Barefoot filed its comments in this matter, in which it disputed the ambiguities alleged to exist, and maintained that even if these ambiguities did exist, they were not material. On September 7, this Office asked the Army to respond to Barefoot's specific comments. The Army notified us on September 14 that it had reviewed the file in light of Barefoot's comments and determined that, based upon a reading of the solicitation as a whole, the apparent ambiguities would not have prejudiced any bidders. The Army stated that it intended to reinstate the original IFB, reject SMR's bid, cancel the replacement IFB, and award the contract to Barefoot. Barefoot subsequently withdrew its protest, and the Army carried out its proposed corrective action.

SMR contends that its interpretation of the solicitation as not requiring the contractor to include a price for lead-based paint removal is correct, and that it should have received the award as the low bidder.

Where, as here, a dispute exists as to the meaning of a solicitation provision, our Office 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 here, we find that SMR's

³This section, now found at FAR § 14.407-3(g)(5), provides for the rejection of an obviously erroneous bid if the price is far out of line with the amounts of other bids received or if it would be unfair to the bidder or the other competitors.

interpretation is not a reasonable one and that the contracting officer's rejection of the bid was proper.

As noted above, the bid schedule's descriptions for CLIN Nos. 0001 and 0002 require paint removal and reference the lead-based paint abatement and disposal section of the construction specification. In addition, paragraph 3.7 of the general statement of work for this solicitation specifically states that "[t]he removal of lead paint is in the scope of work of this project." When these provisions are read together, it is clear that performance of these CLINs requires the removal of lead-based paint from the specified 1,326 window units.

The passage upon which SMR's interpretation relies is found in the part of the lead-based paint abatement and disposal specification which describes the submittals required of the contractor. Among other things,

"[a] space-by-space inspection shall be conducted with the contracting officer. A written inventory shall be prepared that identifies the LBP containing surfaces. The Government's LBP Management Plan will be the basis of the inventory. Areas and materials identified as containing LBP shall be treated unless the Contractor provides analytical evidence stating that the materials are not contaminated with LBP. . . ."

Pointing to this passage, SMR argues that the scope of the work under CLIN No. 0001

"excludes lead-based paint removal procedures as described under [the lead-based paint abatement and disposal specification] since the amount of this removal, if any, will be determined by the contracting officer and contractor by survey and testing. The unit price . . . is restricted to those items that are identifiable from the window details provided in the specifications"

Since this interpretation plainly "reads out" of the solicitation the CLIN's reference to the lead-based paint abatement and disposal specification and the general statement of work's instruction concerning lead-based paint, it does not give full effect to the Army's obvious intent and is thus unreasonable. Moreover, when the solicitation is read as a whole, the passage relied upon by SMR is fully consistent with the provisions the firm would have us ignore. The inventory is necessary to identify the "surfaces," "areas," and materials" containing lead-based paint, and the lead-based paint management plan, referenced in this passage, requires the contractor to identify the components containing lead-based paint and abatement methods for such components. The "Repair to Existing Wood Windows" specifications, also referenced in the CLIN description, list these components as

interior stops, upper sashes, transoms, jambs, sills, and trim. Thus, the solicitation anticipates that different components within a given window unit may or may not contain lead-based paint, and asks the contractor to conduct an inventory prior to performance in order to identify these components. Such identification is necessary for the agency to properly complete the certification of final cleaning and visual inspection required under the lead-based paint abatement and removal specification.

Accordingly, since SMR made it very clear that it did not bid on the basis of removing and disposing of lead-based paint, its bid was properly rejected pursuant to FAR § 14.406-3(g)(5). Martin Contracting, *supra*; Kumar Mechanical Inc., B-240433, Nov. 13, 1990, 90-2 CPD ¶ 391.

To the extent that SMR contends that the Army should have specifically identified the surfaces containing lead-based paint prior to bid opening, or that the specifications were otherwise defective, the protest is untimely. A protest of apparent solicitation improprieties must be filed prior to the time established for bid opening. Bid Protest Regulations, § 21.2(a)(1), 60 Fed. Reg. 40,737, 40,740 (1995) (to be codified at 4 C.F.R. § 21.2(a)(1) (1996)).

The protest is denied.

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