



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Nabholz Building and Management Corporation

File: B-274930

Date: November 21, 1996

James C. Baker, Jr., Esq., Friday, Eldredge & Clark, for the protester.
Maj. Margaret S. Bond, Lt. Col. David S. Franke, and Col. Nicholas P. Retson,
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

Protest that bid schedule in solicitation for construction contained an ambiguity which led the protester to mistakenly include its bond costs under both a base bid line item and a bond costs line item is denied where the bid schedule clearly instructed bidders to set forth their bond costs separately, in a line item set aside for that purpose, and the language in a referenced clause reiterated and explained that instruction; the protester's interpretation unreasonably reads into the solicitation language which is not present and ignores language which is present.

DECISION

Nabholz Building and Management Corporation protests the award of a contract to Flynco, Inc. under invitation for bids (IFB) No. DAHA03-96-B-0001, issued by the United States Property and Fiscal Officer for Arkansas for the construction of a base supply complex at Little Rock Air Force Base, Arkansas. Nabholz argues that the solicitation's bid schedule contained an ambiguity which led the firm to mistakenly include its bond costs under two separate line items.

We deny the protest.

The solicitation's bid schedule contained the following line items:

<u>ITEM</u>	<u>DESCRIPTION</u>
0001	"Base Supply Complex, BASE BID (Does not include additive bid items listed below)"
0002	Additive Bid Item 1
0003	Additive Bid Item 2
0004	Additive Bid Item 3

0005 Additive Bid Item 4
0006 "BOND COSTS, to include bid, performance and payment bonds. All bidders must enter their bond cost in this line item in accordance with [Defense Federal Acquisition Regulation Supplement (DFARS)] Clause 52.219-7008 located in section 00600 Representations and Certification."

The clause at DFARS § 252.219-7008, "Notice of Evaluation Preference for Small Disadvantaged Business (SDB) Concerns--Construction Acquisition--Test Program," is set out in full in the solicitation.¹ In relevant part, the clause states:

- "(b) Evaluation preference.
- (1) Offerors shall separately state bond costs in the offer. Bond costs include the costs of bid, performance, and payment bonds.
 - (2) Offerors will be evaluated initially based on their total prices. If the apparently successful offeror is an SDB concern, no preference-based evaluation will be conducted.
 - (3) If the apparently successful offeror is not an SDB concern, offerors will be evaluated based on their prices excluding bond costs. If, after excluding bond costs, the apparently successful offeror is an SDB concern, bond costs will be added back to all offers, and offers from SDB concerns will be given a preference in evaluation by adding a factor of 10 percent to the total price of all offers"

The Army received five bids and proceeded to read them aloud. During bid opening, one bidder apparently stated that the bid form was ambiguous as to whether bidders were to include the bond costs in the base bid line item, and that her firm had called the contract specialist, who advised the firm to enter such costs only in the bond costs line item. Nabholz then informed the agency that its bid had mistakenly included the bond costs twice--in the base bid line item and in the bond costs line item. The Army acknowledged this assertion, continued reading the bids aloud, and determined that Flynco was the apparent low bidder with a total bid--inclusive of items one through six--of \$4,019,200. Nabholz was the apparent second low bidder with a total bid of \$4,046,500. Since Nabholz would have been the apparent low bidder if the amount it bid in the bond costs line item were subtracted from its total bid, the Army stated that it would consider the implications of the firm's assertion.

¹The test program is set forth at DFARS Subpart 219.72, and the clause at DFARS § 252.219-7008 is to be included in all solicitations to which the test program applies. See Schwegman Constructors and Eng'rs, Inc., B-272223, Aug. 28, 1996, 96-2 CPD ¶ 90.

In discussing the matter with the contract specialist, the contracting officer learned that, prior to bid opening, two bidders had called to ask if the bond costs belonged in the base bid line item. The contract specialist states that he informed each bidder that, in accordance with DFARS § 252.219-7008, they were to separately list their bond costs on the line item provided for that purpose. Two other bidders subsequently called regarding other matters, and he asked if they had any problems with the bid form. Both confirmed that, in accordance with the solicitation's instructions, they had entered their bond costs only in the line item provided for that purpose. According to the contract specialist, these latter conversations were confirmation that the bid schedule was not ambiguous, and that the first two bidders were merely calling to ensure that their bids had been properly prepared. Both the contracting officer and the contract specialist agreed that there was no ambiguity in the bid schedule, given the separate line item provided for bond costs and the language in DFARS § 252.219-7008.

Nabholz was asked to support its claim that it had made a mistake in its bid, pursuant to Federal Acquisition Regulation (FAR) § 14.407-3 (FAC 90-29). The Army reviewed the firm's bid and the solicitation, as well as other information provided by Nabholz, and determined that it could not allow correction of the alleged mistake since the existence of the mistake and the bid actually intended was not ascertainable substantially from the invitation and the bid itself. FAR § 14.407-3(a). Award was made to Flynco on September 27, and this protest followed.

Nabholz argues that the solicitation was ambiguous as to whether bidders should include their bond costs in the base bid line item, and that it was misled into including its bond costs in both the base bid line item and the bond costs line item. The firm contends that it is the "general custom" of the construction trade to include bond costs in the base bid, and that the reference to the DFARS clause in the bond costs line item, as well as the clause itself, can be reasonably interpreted to suggest that the bond costs are to be listed separately for "informational purposes only."

A solicitation ambiguity exists where two or more reasonable interpretations of a solicitation are possible. Kirkland Sales, Inc., B-249090, Oct. 23, 1992, 92-2 CPD ¶ 278; Delta Scientific Corp., B-233485, Nov. 23, 1988, 88-2 CPD ¶ 516. To be reasonable, an interpretation must be consistent with the solicitation when read as a whole and in a manner which gives effect to all its provisions. Herman Miller, Inc., 70 Comp. Gen. 287 (1991), 91-1 CPD ¶ 184; Kirkland Sales, Inc., *supra*. Nabholz's interpretation is not reasonable because it reads language into the solicitation that is not present and fails to give effect to all of the language that is present.

Nabholz's interpretation is premised upon its belief that base bids for construction contracts customarily include bond costs. Whether or not this belief is valid in general, there is no language in this solicitation to suggest that bond costs as to this solicitation are to be included in this base bid line item. To the contrary, the very presence of a separate line item for bond costs provides clear instruction to bidders that their bond costs are to be priced separately from their base bid costs. We agree with the Army that DFARS § 252.219-7008 cements this instruction. The clause not only reiterates that "[o]fferors shall separately state bond costs in the offer," but provides the rationale for doing so.

Nabholz argues that the clause's language concerning the "adding back" of bond costs, DFARS § 252.219-7008(b)(3), supports its position that the bond costs line item was "informational only." The firm contends that if bond costs were to be "added back," they would first have to be subtracted from the base bid. This interpretation ignores the plain language of the bid schedule, which provides a separate line item for bond costs. When the solicitation is read as a whole, it is clear that the language referred to simply means that the figure entered on the bond costs line item may be excluded from or added back to the total bid for purposes of applying the evaluation preference.

Nabholz's reliance on the telephone conversations between the contract specialist and the other bidders to support its position is not persuasive in light of our determination that the only reasonable interpretation of the solicitation's language is that bond costs were to be listed separately from base bid costs. Moreover, the contracting specialist's responses to these bidders did no more than reference or reiterate information that was provided in the IFB. Since no new information was provided, the agency was not required under FAR § 14.208(c) to disseminate the information to all bidders by way of an amendment.² Continental Serv. Co., B-258807.2, Apr. 11, 1995, 95-1 CPD ¶ 190.

The protest is denied.

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²Any information that is given to a prospective bidder concerning an IFB must be promptly furnished to all other prospective bidders as a solicitation amendment if the information is necessary for bidders to submit bids, or if the lack of such information would be prejudicial. FAR § 14.208(c).