



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: MCC Construction Corporation

File: B-276923

Date: July 16, 1997

James J. Gonzales, Esq., Holland & Hart, L.L.P., for the protester.
Laurence Schor, Esq., and Susan L. Schor, Esq., McManus, Schor, Asmar & Darden, L.L.P., for Satellite Services, Inc., an intervenor.
Maj. Michael O'Farrell 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

Under invitation for bids where award was to be made to the bidder submitting the lowest coefficient percentage factor, protest that contracting agency improperly failed to evaluate bids in accordance with the solicitation by using the wrong multipliers is denied where the evaluation was conducting using the multipliers set forth in the solicitation; any alleged contradiction between solicitation provisions was apparent on the face of the solicitation and thus had to be protested prior to bid opening.

DECISION

MCC Construction Corporation protests the award of a contract to Satellite Services, Inc. under invitation for bids (IFB) No. DAHA-44-97-B-0001, issued by the Virginia Army National Guard/U.S. Property and Fiscal Office for Virginia for maintenance, repair, or minor alterations at specified military bases. MCC argues that the Army improperly failed to evaluate the bids in accordance with the solicitation's stated methodology.

We deny the protest.

The solicitation, conducted using two-step sealed bidding, anticipated the award of a multi-year, indefinite delivery/indefinite quantity fixed-price contract to provide these services to Virginia Air National Guard bases located at the 192d Wing, Sandston, Virginia; the Alert Facility located on Langley Air Force Base, Virginia; and the 203d Redhorse Squadron at the State Military Reservation, Virginia Beach, Virginia. Six firms, including MCC and Satellite, were deemed qualified to participate in the second stage of the procurement, at issue here.

Under the anticipated contract, the agency will issue delivery orders for projects to be performed at the three locations. Prices for individual delivery orders will be established by multiplying the awardee's proposed coefficient percentage factors by the prices of the specified tasks as listed in the current edition of a standard unit pricing guide.¹ Hence, rather than bids for fixed-dollar amounts, bidders were to provide separate coefficient percentage factors for each location's set of four line items, for a total of 12 factors.² The four line items listed under each location were for construction, repair, and maintenance projects during normal working hours; construction, repair, and maintenance projects during overtime hours; highway, water, and sewer line projects during normal working hours; and highway, water, and sewer line projects during overtime hours.³

The solicitation's section C, paragraph 00100-3, "Statement of Work," stated:

"Projects will vary in size and dollar amount. . . . It is anticipated that 90% of all work called for will be construction; the remaining 10% will be highway/sewer projects. Projects are expected to be distributed as follows:

85% Sandston 10% Virginia Beach 5% Langley"

Paragraph 00100-8 of that same section, "Percentage of Work," stated that the percentage of work at each base was "an estimate used for evaluation factors for purpose of award."

While the IFB stated that bids would be evaluated and award made in accordance with the sealed bidding provisions of the Federal Acquisition Regulation, it was not until a pre-bid opening conference that the agency clarified that the basis for award would be the lowest coefficient. At that conference, the agency also stated that clarification was required as to how the agency would determine the lowest proposed coefficient, and that this issue would be addressed by amendment.

¹A coefficient percentage factor is a numerical factor representing the contractor's indirect costs and profit or any other costs not included in the unit pricing guide's prices. A coefficient percentage factor of 1.25, for example, would indicate that indirect costs and profit are 25 percent of direct costs.

²Bidders were to submit two additional coefficient percentage factors for line items whose evaluation is not at issue here.

³The solicitation estimated that 2 percent of the maximum dollar amount of the contract would be for work accomplished on an overtime basis.

Amendment No. 0001, issued February 3, 1997, contained the following instructions (underscoring in the original):

"2. The following clarification is made for the basis of award:

The basis for award will be lowest weighted coefficient as described below . . .

"3. The lowest coefficient will be determined by weighing each line item against the amount of work to be performed as described in the Statement of Work. The weighted average is for evaluation purposes only and will not be incorporated into any resulting contract. For example:

BIDDER #1

	DESCRIPTION	COEFFICIENT*	% OF WORK AVG	
0001	Construction at Sandston	1.06	85	.901
0002	Overtime work at Sandston	.02	85	.017
0005	Construction at Va Beach	1.10	10	.110
0007	Highway Work at Va Beach	1.09	10	.109
WEIGHTED COEFFICIENT BIDDER #1				1.137

BIDDER #2

0001	Construction at Sandston	1.08	85	.918
0002	Overtime at Sandston	.04	85	.034
0005	Construction at Va Beach	1.15	10	.115
0007	Highway Work at Va Beach	1.11	10	.111
WEIGHTED COEFFICIENT BIDDER #2				1.178

"* Coefficient rates are for example purposes only and are not intended to represent any anticipated figures.

"Based on the above sample, Bidder #1 would be the apparent low bid."

"4. . . . Bids will be publicly opened and coefficients read aloud; however, no apparent low bidder will be declared until a complete evaluation is made using the above guidance."

On the February 11 bid opening date, the Army read aloud the coefficients proposed by each of the six bidders. The record shows that the bids were evaluated in

accordance with the example provided in the amendment. That is, the coefficients were multiplied against the locational percentages listed in the statement of work. Under this evaluation methodology, Satellite was determined to be the apparent low bidder, with a coefficient of 2.2616. MCC was the apparent second low bidder, with a coefficient of 2.2910.

By letter dated February 24, MCC advised the agency that it had received telephone calls from Satellite indicating that that firm had won the contract. MCC stated that it had been present at bid opening and had recorded the coefficients, and that its calculations showed it to be the apparent low bidder. MCC continued:

"On Amendment 0001, paragraph 3, . . . it states, 'The lowest coefficient will be determined by weighing each line item against the amount of work to be performed as described in the Statement of Work.' It then goes on to present an inaccurate example of how to determine the lowest coefficient.

"It is the contention of MCC Construction Corporation that the example presented in Amendment 0001 is flawed and the coefficients should be weighted 'against the amount of work to be performed as described in the Statement of Work.' Using this as a guide, each coefficient would be weighted with three factors: (1) Its location percentage . . . ; (2) Its classification percentage (i.e. construction or heavy and highway) . . . ; and (3) Its normal or other-than-normal working hours percentage"

After MCC was advised that award had been made to Satellite, the firm filed this protest.

MCC asserts that the coefficients were to be weighted against the "amount of work to be performed as described in the Statement of Work"; that the statement of work contained two sets of figures; and that, as a result, the multipliers should have been combinations of these two sets of figures, adjusted for overtime or normal working hours, as appropriate.⁴ The Army and Satellite argue that the amendment's example clearly indicated that the evaluation would be conducted using the multipliers which were actually used. They further argue that MCC's protest is an untimely challenge

⁴For example, MCC believes that the multiplier for the line item covering construction during normal working hours at the Sandston location should have been 74.97 percent:

- a) 85 percent [percentage of work at Sandston] x 90 percent [percentage of work that will be construction] = 76.5 percent;
- b) 76.5 percent x 98 percent [percentage of work conducted during normal working hours] = 74.97 percent.

to what it sees as a contradiction between the amendment's example and the statement of work.

To be reasonable, an interpretation of a solicitation must be consistent with the solicitation when read as a whole and in a manner giving effect to all of its provisions. Herman Miller, Inc., 70 Comp. Gen. 287, 290 (1991), 91-1 CPD ¶ 184 at 4; Supplemental Staffing Servs., Inc., B-257385, Sept. 21, 1994, 94-2 CPD ¶ 108 at 3. MCC's interpretation of the solicitation's evaluation methodology is not reasonable because it fails to give effect to all of the language that is present. Nabholz Bldg. and Management Corp., B-274930, Nov. 21, 1996, 96-2 CPD ¶ 196 at 3.

It is undisputed that the multipliers would be based on "the amount of work to be performed as described in the Statement of Work," and that the statement of work shows two sets of figures, one for the type of work to be done and one for the percentage of projects expected to be performed at each location. If the amendment had not included an example showing how the evaluation would be conducted, it might be necessary to parse the statement of work to determine what the multipliers would be. But the amendment's inclusion of the example disposes of this question by clearly indicating that the "amount of work" would be represented by the locational percentages. That these percentages standing alone, and not in any combination with other percentages, would be used to evaluate the bids is underscored by the language in section C, paragraph 00100-8, which states that the "percentage of work at each base . . . is an estimate used for evaluation factors for purpose of award." In our view, any question that existed regarding the amount of work as described in the statement of work was answered by the amendment's example.

MCC's interpretation of the solicitation wholly ignores the language of the amendment's example; indeed, it must in order to make any sense.⁵ The firm's contention that the example could not have been meant to be taken literally because it did not account for all line items is untenable; the example was just that, an example. The fact that it was not all-inclusive does not entitle the protester to ignore it altogether, see Nabholz Bldg. and Management Corp., supra, and its insistence on doing so was at its peril. The record shows that the evaluation methodology used by the agency was proper and consistent with the solicitation, and we have no basis to object to the agency's actions. General Elec. Co., 71 Comp. Gen. 519, 521 (1992), 92-2 CPD ¶ 159 at 3; Supplemental Staffing Servs., Inc., supra, at 4.

⁵MCC's argument that the agency's interpretation of the solicitation ignores the language in the statement of work suffers from the same defect. Only if the agency ignored the language of the amendment's example could its interpretation even arguably be unreasonable.

In any event, the protest itself reveals that MCC is actually challenging what it perceives to be a contradiction between the amendment's example and the language in the statement of work. Even if we did not consider the IFB clear as to the evaluation methodology that would be used, the contradiction that MCC perceives was apparent on the face of the solicitation. Under our Bid Protest Regulations, such a deficiency must be protested prior to the time set for bid opening. 4 C.F.R. § 21.2(a)(1) (1997); General Elec. Co., *supra*. The allegation made in MCC's February 24 letter to the agency, by its own admission, before the agency notified it of the evaluation process used, only serves to reinforce our conclusion that the firm was on notice that this alleged contradiction existed on the face of the solicitation. Where a protester believes that such a contradiction exists, it does not have the option of simply making unilateral assumptions regarding the meaning of the provisions and then expecting relief when the agency does not act in the manner the protester assumed; rather, the patent impropriety it believes exists must be challenged prior to closing. Christie Constructors, Inc., B-271759; B-271759.2, July 23, 1996, 96-2 CPD ¶ 87 at 6.

The protest is denied.

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