



Decision

Matter of: Continental Service Company

File: B-258807.2

Date: April 11, 1995

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Riggs L. Wilks, Jr., Esq., and Elizabeth DiVecchio Berrigan, Esq., Department of the Army for the agency.

Jacqueline Maeder, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency provided information to awardee regarding solicitation requirements without issuing amendment is denied where the awardee was provided only information contained in the solicitation which reflected the only reasonable interpretation of the solicitation.

DECISION

Continental Service Company protests the award of a contract to Climate Masters, Inc. under invitation for bids (IFB) No. DAHC36-94-B-0026, issued by the Department of the Army for maintenance and repair of 17 U.S. Army Reserve facilities in Maryland, Delaware, and Washington, D.C. Continental alleges that Climate Masters obtained an unfair competitive advantage because the agency provided explanations and clarifications of the solicitation to Climate Masters without providing the same information to other bidders.

We deny the protest.

The solicitation contemplated the award of one to four fixed-price requirements contracts, for four geographic regions, for a base year with 2 option years. The solicitation required the contractor to perform normal, regularly scheduled repair and maintenance work, plus government-directed and emergency work.

In September, Climate Masters submitted several written questions to the agency concerning certain aspects of the solicitation work requirements, to which the Army responded by letter dated September 23. The agency's responses to the questions were not disseminated by amendment to other bidders. At bid opening on September 26, Climate Masters's bid was low for each region and it was awarded a contract for all four regions on September 30.

The protester argues that the information in the letter provided to Climate Masters had a price impact because it clarified the meaning of a critical solicitation term and of the requirements for emergency and government-directed repairs. Accordingly, the protester asserts that the agency was required under Federal Acquisition Regulation (FAR) § 14.208(c) to disseminate this information to all bidders and that by failing to do so improperly conferred a competitive advantage on Climate Masters.

It is a fundamental principle of competitive bidding that solicitations must contain sufficient information to allow offerors to compete intelligently and on an equal basis. University Research Corp., 64 Comp. Gen. 273 (1985), 85-1 CPD ¶ 210. Thus, under FAR § 14.208(c), in order to provide a common basis for the submission of bids, any 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); Michelin Aircraft Tire Corp., B-248498; et al., Aug. 31, 1992, 92-2 CPD ¶ 142. Here, as discussed below, the information which was provided only to Climate Masters simply referenced or repeated sections from the solicitation. Thus, Climate Masters received nothing more than reiterations of the only reasonable interpretations of the IFB, and such answers are not required to be disseminated to other bidders under FAR § 14.208(c).

Climate Masters submitted certain questions concerning normal, regularly scheduled repair. For this work, the solicitation required that the contractor visit each facility twice a week and be responsible for up to 48 hours of normal repairs per month, per facility. The term "facility" was defined and "facilities" were identified in several IFB provisions. The solicitation in the scope of work section at C.1.1 referenced four individual buildings at Ft. Meade, Maryland as "facilities," but these four buildings were explicitly paired on the bid schedule, which indicated that each pair constituted a "facility." The IFB also identified the DeKalb Center, with three buildings, as one facility. The definition of "facility" provided at section C.2.1.7 of the solicitation stated that

the term includes "everything [g]overnment owned within [g]overnment boundaries . . . except Ft. Meade facilities which shall include only the building and the parking lots with security fences."

In its questions, Climate Masters noted that the bid schedule combined the four Ft. Meade buildings into two facilities and that other facilities have more than one building, and asked if the contractor was required to visit each facility or each building twice a week. The agency's response referred to the definition of "facility" in C.2.1.7, indicated, as was apparent from the bid schedule, that the Ft. Meade buildings were paired due to location and type, and stated that the contractor should visit each facility as often as required by the solicitation.

The protester alleges that these answers provided needed clarifications as to what constituted a "facility" versus a "building" at Ft. Meade and that, based on the responses, Climate Masters bid the Ft. Meade buildings as two facilities and the DeKalb building as one facility while Continental bid each Ft. Meade and DeKalb building as a separate facility.

In fact, Climate Masters's questions did not seek clarification of what constitutes a facility versus a building at Ft. Meade. Rather, the questions clearly show that Climate Masters recognized that the four Ft. Meade buildings had been paired into two facilities and that the DeKalb Center was one facility with three buildings.¹ Climate Masters merely sought verification that the contractor was to visit each facility rather than each building twice a week. The contracting officer's response did no more than reference or reiterate information which 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 given to Climate Masters to all bidders.

¹Climate Masters states, for example, that "it is apparent there are several [f]acilities that have more than one (1) building; i.e., DeKalb; 3 [b]uildings. . . ."

²To the extent Continental believed that the IFB was ambiguous regarding what constituted a facility, as it now argues, the allegation is untimely since protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening must be filed prior to bid opening. 4 C.F.R. § 21.2(a)(1) (1995); Manatts, Inc., B-237532, Feb. 16, 1990, 90-1 CPD ¶ 287.

Similarly, the agency's responses to Climate Masters concerning government-directed work provided no new or additional information to the awardee. The IFB defined government-directed repair as work requested by the government to accomplish repairs outside the requirements of the contract. The solicitation provided that the contractor and agency would negotiate the terms of the repair and the contractor would be reimbursed for these services in accordance with the bid schedule, using line items 3 and 4. Under the original bid schedule, at these line items, the Army itemized 14 job categories, for example, carpentry, roofing, and locksmith services with estimated hourly requirements for each category and requested that the bidder supply hourly and total labor prices for each category. Under the revised bid schedule, issued as part of amendment No. 3, the agency deleted the itemized job categories and provided a total estimated labor cost for these repairs.

In its questions, Climate Masters referred to the deletion of the itemized labor rates and, noting that only an annual estimated labor cost was provided, asked how hourly wage scales would be determined to include overhead and profit. The agency responded that each government-directed repair would be negotiated separately as stated in C.1.12.5. Continental argues that, while the solicitation does suggest that costs will be negotiated, the IFB still provides that costs will be based on the deleted itemized line item rates.

As noted above, the solicitation provided that each government-directed repair would be negotiated and that price was based on the prices in the bid schedule. The revised bid schedule merely lumped all the itemized labor costs into a single estimated labor total based on historical data. For each repair, the contractor must simply break out the labor cost for the applicable labor category. Accordingly, the information provided to Climate Masters was already contained in the IFB and the agency was not required to disseminate the answer to all bidders.

Finally, Climate Masters questioned emergency repair which the IFB defined as work required to correct a condition that endangers the health and safety of personnel or could cause major damage to the security of the building. In the scope of work statement, paragraph C.1.12.3.2, the solicitation stated that the contractor shall "stay on site until either the repair has been made or the condition has been upgraded" and that "[t]he [c]ontractor shall continue the work until completed or an interim repair has corrected the emergency condition." The bid schedule contained no separate line item for emergency repair. Rather, bidders were to include the price for emergency repairs in their prices for normal,

regularly scheduled monthly maintenance and repair for each facility.

Climate Masters asked if there were a dollar limit or a 24 hour per task limit on these emergencies repair services, if an emergency repair would be judged complete when a temporary repair is complete and if an act of God or catastrophic occurrence, such as a hurricane affecting 50 percent or more of the facilities, could justify compensation other than under the base contract.

The contracting officer's response pointed out that the solicitation clearly indicates that emergencies are to be totally repaired and provides no dollar or hour limit on this item. The contracting officer also states that she could not address the question concerning an act of God or catastrophic occurrence, but that the contractor had to perform in accordance with the terms and conditions of the solicitation and that any question regarding compensation would have to be handled under the Disputes Clause.

The protester argues that while provision C.1.12.3.2, noted above, is ambiguous, the agency's explanation of this provision given to Climate Masters stated unequivocally that emergencies are to be "totally repaired." In our view, the solicitation unambiguously provided that emergency repairs are to be functionally complete, stating explicitly, for example, that the contractor shall continue the emergency repair until the work is completed or the emergency condition is corrected, and the answers provided to Climate Masters simply reiterated this requirement. To the extent Continental believed that the requirement was ambiguous, as it now states, it should have protested this alleged ambiguity before bid opening. 4 C.F.R. § 21.2(a)(1). The answer provided Climate Masters regarding an act of God or catastrophic occurrence is standard information provided in the solicitation.

Because all of the answers given to Climate Masters simply reiterated the only reasonable interpretation of the IFB and did not provide substantive information that was not already furnished in the solicitation, the agency was not required to disseminate this information to other bidders under FAR § 14.208(c).

The protest is denied.

\s\ Ronald Berger
for Robert P. Murphy
General Counsel