



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Astro Quality Services, Inc.

File: B-280676

Date: November 5, 1998

Johnathan M. Bailey, Esq., Theodore M. Bailey, P.C., for the protester.
Barbara Bear, Esq., Department of the Army, for the agency.
Katherine I. Riback, Esq., and Paul Lieberman, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

1. Request for upward correction after bid opening to add price for replacement of kitchen cabinets and countertops was properly denied by agency where, based on its mistaken interpretation of the solicitation requirements, the low bidder intentionally did not include these items in its bid.
2. Protest that solicitation contained latent ambiguity is denied where, read as a whole, solicitation clearly required that bidders provide the items at issue.

DECISION

Astro Quality Services, Inc. protests the determination of the Department of the Army to deny Astro's request to correct an alleged mistake in its bid under invitation for bids (IFB) No. DACA63-97-B-0053.

We deny the protest.

The IFB, issued on July 16, 1997, was for the rehabilitation of buildings 218 and 220 at the Brooks Air Force Base, San Antonio, Texas. The required renovations, as specified in the IFB plans and drawings, included wall coverings, lights, cabinets, countertops, door refinishing and ceiling fans. Section 06410 of the IFB, entitled custom casework, contained various specifications and requirements for cabinets and countertops and stated in pertinent part, at 06410-3, that:

Casework, including cabinets and counters, shall be flush overlay design and shall be custom built, either at a mill or in-place in the building. Casework shall be custom grade, and unless otherwise specified, shall be built to the quality standards specified in AWI-02 for cabinets and casework. Design shall be as indicated on the drawings.

The drawings provided as part of the IFB contained numerous depictions and notes pertaining to cabinet and countertop requirements, including specifications calling for the removal/demolition of kitchen cabinets and countertops. Drawing sequence No. 17 provides dimension and construction details for the kitchen cabinets. Drawing sequence Nos. 9, 12, and 14 contain references to the design for new kitchen cabinets and countertops.

Amendment No. 6, issued on August 21, among other things, deleted from the IFB section 12390, entitled cabinets and countertops, which contains specifications for prefabricated cabinets and countertops. Neither amendment No. 6 nor any other amendment provided for any change to the IFB plans and drawings with respect to kitchen cabinets and countertops, nor made any change to section 06410.

The IFB called for the submission of only two lump sum entries, one for "suite plan" renovations, the other for "studio plan" renovations, plus a total bid entry consisting of the sum of these two. IFB Amendment No. 1 at 00010-3. Eleven bids were received and opened as scheduled on June 15, 1998. Astro submitted the low total bid of \$568,000. Subsequent to the bid opening Astro's President spoke with the contract specialist and, upon learning the bid prices, expressed concern that Astro's bid price was significantly below the other bid prices submitted, and 22 percent below the independent government estimate (IGE) of \$725,386.41. Contracting Division June 17, 1998 Memo Requesting Comments.

Thereafter, by letter dated June 18, Astro requested the agency's permission to correct its bid. Astro stated that it had understood amendment No. 6 to mean that the requirement for new cabinets and countertops had been eliminated from the solicitation, and that therefore it mistakenly eliminated \$103,946.15 from its bid price. June 18, 1998 Astro Letter to Agency Requesting Correction at 2. In support of its request for correction, Astro submitted an affidavit from Astro's estimator and a computer disk with its estimating spreadsheets. Astro contended that its worksheets established that it "intended to include an amount for cabinets, but was misled by Amendment 0006 into eliminating those costs from its bid." Id.

The contract specialist determined that the costs for kitchen counters and countertops were in the official IGE and that amendment No. 6 had not eliminated the requirement for new cabinets and countertops. The agency determined that Astro's misinterpretation of amendment No. 6 was a judgment error, not subject to correction and denied Astro's request to correct its bid. The agency also noted that even if Astro had established the existence of a mistake that might have been correctable, Astro's submissions did not establish what it actually intended to bid for cabinets and countertops. In this regard, the agency noted that while Astro requested an upward correction in its bid of \$103,946.15, its workpapers indicate that it deleted \$93,100 as a result of amendment No. 6. July 24, 1998 Agency Decision on Astro's Request for Correction. Accordingly, the agency rejected Astro's bid and made award to the next low bidder at \$745,000.

Astro filed this protest with our Office, arguing that it is clear from its workpapers that, prior to the issuance of amendment No. 6, it intended to bid \$93,100 in direct costs for countertops and cabinets. Astro now asserts that when its normal mark-ups are applied to this figure the total would be \$139,946.15, and therefore seeks upward correction in that amount. Protest at 3.

In order to protect the competitive bid system from abuse, the Federal Acquisition Regulation (FAR) imposes a high standard of proof--clear and convincing evidence--upon bidders seeking upward correction of their bids after bid opening but before award. The bidder must submit clear and convincing evidence that a mistake was made, the manner in which the mistake occurred, and the intended price. FAR § 14.407-3(a). Workpapers, including records of computer-generated software spreadsheets/worksheets, may constitute part of that clear and convincing evidence, if they are in good order and indicate the intended bid price, and there is no contravening evidence. RJS Constructors, B-257457, Oct. 7, 1994, 94-2 CPD ¶ 130 at 3. Because the contracting agency is vested with authority to correct mistakes, and because the weight to be given evidence in support of an asserted mistake is a question of fact, we will not disturb an agency's decision concerning bid correction unless there was no reasonable basis for the decision. CRK-JVC/Shockley Joint Venture, B-265937, Jan. 17, 1996, 96-1 CPD ¶ 85 at 5. Here, the record establishes that the Army's decision not to permit correction of Astro's bid was reasonable.

The agency determined that Astro's estimator made a business judgment, based on his interpretation that amendment No. 6 deleted the requirement for new cabinets and countertops from the solicitation. Astro's bid spreadsheets for section 12390 contained \$93,100 for cabinets and countertops which had been deleted with the note "DELETE PER ADDENDUM 6." Astro's spreadsheet had no prices under section 06410 custom casework, but contained the note "see section 12390." Additionally, the agency determined that there was no indication in Astro's spreadsheets that its bid ever included costs for the required demolition of cabinets and countertops. The agency concluded that Astro's worksheets simply reflect its decision not to provide new cabinets and countertops that are actually required under the solicitation. Astro's position is that while, as a result of amendment No. 6, it did not intend to provide any new cabinets or countertops in its bid, it should be allowed to correct its bid because it is clear from its worksheets how much Astro originally intended to bid for new countertops and cabinets.

Although it does appear that Astro relied on a mistaken interpretation of amendment No. 6, it is also quite clear that the firm bid precisely the amount it intended. The kinds of mistakes that may be corrected under FAR § 14.407-3 do not include mistaken or erroneous interpretations of the solicitation specifications. Where, as here, a bidder discovers after bid opening that it based its bid on a mistaken premise, the bidder may not recalculate its bid to arrive at a bid not

intended before bid opening. McGhee Constr., Inc., B-255863, Apr. 13, 1994, 94-1 CPD ¶ 254; American Dredging Co., Inc., B-229991.2, Sept. 15, 1988, 88-2 CPD ¶ 248 at 3. Accordingly, the agency reasonably determined that it would be improper to permit bid correction here.¹

The protester also argues that the solicitation contains a latent ambiguity because it is subject to two interpretations, one which requires new kitchen cabinets and one which does not.

An agency's solicitation specifications must be sufficiently definite and free from ambiguity to permit competition on a common basis. An ambiguity exists if specifications are subject to more than one reasonable interpretation. Toxicology Testing Servs., Inc., B-219131.2, Oct. 28, 1985, 85-2 CPD ¶ 469 at 4. While it is not necessary for the finding of an ambiguity that the interpretation of the charging party be the most reasonable one, the party is, nevertheless, required to show that its interpretation of the requirement in issue is reasonable and susceptible of the understanding it reached. Wheeler Bros., Inc.; Defense Logistics Agency--Recon., B-214081.3, Apr. 4, 1985, 85-1 CPD ¶ 388 at 7-8. To be reasonable, an interpretation must be consistent with the solicitation, read as a whole. Captain Hook Trading

¹We also note that Astro's spreadsheets contain no figure for demolition of the existing countertops and cabinets. Astro contends in its comments that its original bid contained an unspecified amount for the demolition of cabinet and countertops but that this amount was deleted after amendment No. 6. Astro's September 8, 1998 Comments at 4. Even if Astro's original bid did contain some amount for the demolition of cabinets and countertops, there is no way to determine the exact amount that Astro bid from its spreadsheets. Further, the amount of Astro's claimed mistake has ranged from \$103,946.15 to \$139,946.15.

Astro, for the first time in its comments, also asserts that it interpreted section 06410 of the IFB as applying solely to bathroom cabinets, and section 12390 as applying solely to kitchen cabinets. Protest Comments, September 8, 1998, at 3. Astro contends that after the agency issued amendment No. 6, deleting section 12390 from the IFB, it determined that the agency no longer required new kitchen cabinets and countertops and therefore deleted \$93,100 from its bid. *Id.* This argument is without merit, and is at odds with Astro's actions following receipt of amendment No. 6, when it submitted worksheets in support of its mistake claim showing Astro's "\$ 0" cost entries for section 06410, accompanied by the notation "see section 12390," with the costs for section 12390 x'd out, accompanied by the notation "delete per addendum 6." See Exhibit 3 (worksheets), §§ 06410, 12390, to June 18, 1998 Astro Letter, *supra*. The clear meaning of these worksheet entries is that Astro did not differentiate between the applicability of the two sections and, in any case, whatever its understanding in this regard, in response to amendment No. 6, Astro deleted from its bid the requirements under both sections.

Co., B-224013, Nov. 17, 1986, 86-2 CPD ¶ 566 at 3. When a dispute exists as to the actual meaning of a solicitation requirement, we will resolve the dispute by reading the solicitation as a whole and in a manner that gives effect to all provisions of the solicitation. Malkin Elecs. Int'l., Ltd., B-228886, Dec. 14, 1987, 87-2 CPD ¶ 586 at 4.

Here, when reasonably read as a whole the solicitation was not, as the protester contends, ambiguous as to the requirement for new kitchen cabinets and countertops. While amendment No. 6 deleted section 12390, containing cabinet and countertop specifications, the IFB continued to require bidders to perform the other work called for by the specifications (including section 06410 custom casework, section 02050 demolition) and by the solicitation's drawings. Astro's interpretation of amendment No. 6, as deleting the requirement for kitchen cabinets and countertops, is unreasonable because it would render meaningless significant portions of these other provisions which set forth the solicitation requirements.

The protest is denied.

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