

DECISION

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**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

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FILE: B-210275**DATE:** August 22, 1983**MATTER OF:** United States Contracting Corporation**DIGEST:**

1. Protest that solicitation misstates quantities of filters needed to maintain heating, air conditioning, and ventilation systems is denied. An agency properly may state its needs in terms of a reasonably accurate estimate of the quantity of work required, and the protester has not shown that the agency's estimate is unreasonable.
2. Protest that solicitation contains incorrect filter size specifications and fails to identify the types of filters required is denied. Even if protester is correct, it has not shown that it was prejudiced by such defects.
3. Protest against alleged solicitation improprieties that were apparent prior to bid opening is dismissed as untimely because it was not filed before bid opening, as required by GAO Bid Protest Procedures.

United States Contracting Corporation (USCC) protests the solicitation of bids under invitation for bids (IFB) No. N62474-82-B-3235 issued by the Terminal Island Naval Complex, Long Beach, California. The IFB anticipates the award of a requirements contract for the maintenance and replacement of approximately 39,000 filters annually in a number of listed heating, air conditioning, and ventilation systems, and the repair and maintenance of various air scrubbers. We deny the protest in part and dismiss it in part.

USCC is the incumbent contractor for a portion of the work and states that it is unable to bid because it knows, based on its experience, that the IFB is inaccurate and incomplete. It contends that the filter replacement schedule in the IFB incorrectly identifies the quantities

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and sizes of the filters involved, and does not specify the type of filters to be replaced.

The original solicitation was canceled, revised and reissued after USCC complained that it was defective. Due to the protester's continued insistence that the specifications were inaccurate and incomplete, the Navy also amended the revised solicitation. The Navy contends that the amendments to the IFB adequately corrected the required quantities, sizes and types of filters. It also states that the quantities specified are considered to be an accurate estimate of its requirements.

With regard to the protester's allegation that the quantities of filters required are incorrectly specified, we first point out that an agency's requirements properly may be stated in terms of the estimated quantity of work anticipated under the contract. G & B Packing Company, Inc., B-204192, April 20, 1982, 82-1 CPD 359. Here, the IFB contained the Navy's standard requirements clause, which cautions offerors that the quantities of supplies or services specified in the IFB are only estimated quantities.

While it is incumbent on the contracting activity to make the estimate of its needs as accurate as possible in order to assure that bidders are competing on a common basis, G & B Packing Company, Inc., *supra*, there is no requirement that the estimate be absolutely correct. Space Services International Corporation, B-207888.4, .5, .6, .7, December 13, 1982, 82-2 CPD 525. The estimated quantities simply must be a reasonably accurate representation of anticipated actual needs. *Id.*

USCC has failed to show that the filter quantities contained in the IFB are not a reasonably accurate estimate of the Navy's needs. Although USCC submitted a marked-up copy of the IFB replacement schedule identifying those filter quantities it considers incorrect, it did not indicate what it believes the correct quantities are, despite the fact that it questions the IFB figures on the basis of its superior knowledge as an incumbent contractor. Thus, even assuming that some of the quantities

are in fact incorrect, we find no support for a conclusion that they are so overstated or understated that the Government estimate cannot be considered reasonably accurate. This is particularly true in light of the fact that a total quantity of approximately 39,000 filters is involved. Consequently, this aspect of the protest is denied.

USCC also alleges that the sizes of the filters to be replaced are incorrectly specified, and that the type of filters to be replaced is not indicated. We have recognized that solicitations must be drafted in a manner that informs all bidders, in clear and unambiguous terms, what will be required of them under the contract to be awarded. Cummings Marine Systems, Inc., B-197506, August 21, 1980, 80-2 CPD 136.

The Navy says it corrected the errors in filter types and sizes when it amended the revised IFB. In the marked-up copy of the IFB replacement schedule submitted by the protester, however, a large number of filters are identified as incorrectly specified by size, and as not specified by type.

We deny this aspect of USCC's protest because we cannot conclude that the protester has suffered any actual prejudice, even if its position is correct. See Saudi Maintenance Company, Ltd., B-205021, June 8, 1982, 82-1 CPD 552, at 5. Although USCC states that it was unable to bid on the basis of "incorrect and incomplete" specifications, it premises its protest on its actual cognizance of the correct filter types and sizes. Thus, USCC clearly was not required to guess at the correct specifications, as it alleges.

Further, there has been no showing that the inclusion of incorrect filter sizes, or the failure to identify filter types, had a prejudicial impact on bid prices. USCC has neither alleged nor shown that bidders were misled into bidding unrealistically low prices that USCC could not have matched due to its knowledge of the correct specifications.

In that regard, USCC itself states that the second and third low bidders in fact were familiar with the actual contract requirements as a result of former or

current contracts. The low bid was only about \$3600 less than the second low bid and, in any event, both the first and second low bidders were found nonresponsible. The proposed awardee, who is the third low bidder, is also an incumbent contractor for repair and maintenance of the heating, ventilation, and air conditioning units included in this IFB. It therefore was in a position similar to that of the protester. This record simply does not support a finding that the protester was prejudiced by the allegedly deficient specifications in this case.

After it filed its initial protest with this Office, USCC submitted a supplemental document in which it raised several new allegations. These were that the specifications concerning the repair and maintenance of the air scrubbers were deficient; that under the terms of the IFB, the price to repair the scrubbers improperly was to be negotiated after contract award; and that the IFB contained a misclassification of labor needs. We find these issues to be untimely raised.

Our Bid Protest Procedures, at 4 C.F.R. § 21.2(b)(1) (1983), require that protests based on improprieties apparent in a solicitation prior to bid opening be raised before that date. In this case, USCC filed its supplemental submission 3 weeks after bid opening. Consequently, this portion of the protest is dismissed.

The protest is denied in part and dismissed in part.

for *Harry R. Van Cleave*
Comptroller General
of the United States