

DECISION

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

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FILE: B-211634**DATE:** February 27, 1984**MATTER OF:** Christos Painting and Contracting Company**DIGEST:**

1. Protest alleging that an oral statement made by an agency official during a pre-bid tour misled bidders concerning the total square footage of the surfaces to be painted is denied since effective competition was achieved and since the solicitation contained scale drawings of the areas to be painted and cautioned bidders to verify conditions and not to rely on oral statements by government representatives that vary from the drawings.
2. Allegation that drawings accompanying a solicitation for painting services were defective because they did not allow bidders to calculate accurately the total area of the surfaces to be painted is untimely because the allegation involves an impropriety apparent in the solicitation and should have been raised prior to bid opening.

Christos Painting and Contracting Company protests the award of a contract to Forakis Painting & Contracting Co., Inc. under invitation for bids (IFB) No. GS-11B-08157 issued by the General Services Administration (GSA). The solicitation was for painting selected offices and corridors at the Pentagon. The protester contends that a square footage figure used by agency officials at a pre-bid conference misled bidders and that drawings accompanying the solicitation did not allow for an accurate calculation of the surface area to be painted.

We deny the protest in part and dismiss it in part.

The solicitation required bidders to submit a lump sum base bid for painting all areas specified on drawings accompanying the bid package. The notes to the drawings stated that the work involved painting all previously painted surfaces, such as walls, ceilings, doors, windows, and ductwork in the designated areas. The solicitation also required bidders to submit a unit price per square foot for the addition or deletion of up to 20,000 square feet of painting. The government reserved the right to award the contract on the basis of the total of the base bid and the extended unit price bid. Neither the solicitation nor the drawings stated the total square footage of the surfaces to be painted. The drawings, however, indicated that they were prepared to a scale of 1/16 inch to 1 foot and that most of the ceilings were either 9 or 14 feet high with the rest varying between 8 and 10 feet. The solicitation stated that the "contractor shall verify conditions," and cautioned bidders not to rely on oral statements by government personnel at variance with the IFB:

The agency conducted a pre-bid tour and conference; a representative of the protester attended both. The protester contends that during the tour a GSA official stated that the total area to be painted measured 776,800 square feet. According to the protester, the official emphasized that a GSA engineer had determined the total area to be painted and that this figure was accurate. The agency concedes that the official used a figure of 776,800 square feet during the tour and may even have stated that this was the total area to be painted. The GSA engineer, who did not attend either the tour or the conference, actually had estimated the area of the surfaces to be painted as close to 2 million square feet. The agency says that the figure of 776,800 square feet was only the measurement of the floor space in the areas to be painted.

When bids were opened, the protester's base bid of \$233,000 was second low; the low bid was \$154,190. Eleven other bids ranged between \$310,975 and \$477,000. The government's estimate was \$390,000. Shortly after bid opening, the low bidder, Brickwood Contractors, Inc.,

informed the contracting officer that it had made a mistake and wished to withdraw its bid. It submitted worksheets showing that it had used the figure of 776,800 as the total surface area to be painted. The agency permitted Brickwood to withdraw.

Because the protester's bid was below the government's estimate and out of line with the other bids, the contracting officer requested the protester to verify its bid. The protester responded with a letter acknowledging that it had made the same mistake as Brickwood, but requested that it be allowed to correct its bid because it was based on a "mutual mistake." In the event that correction was not permitted, however, the protester requested that its letter be regarded as a withdrawal of the bid and a protest of any award under the solicitation. The contracting officer requested that the protester submit its worksheets in support of its claim of mistake, but the protester said it had no worksheets to submit. Nevertheless, the contracting officer determined that the protester's bid was so far out of line with those of the other bidders and the government's estimate that acceptance of the bid would be unfair to the protester. He therefore permitted withdrawal of the bid and made award to another bidder. The protest to this Office objecting to the award followed.

The protester's basic complaint is that it and other bidders were misled with regard to the total area to be painted.

The section of the solicitation that announced the pre-bid tour and conference provided as follows:

"No oral statement made by a government representative during the prebid conference, nor any written record of such oral statements as may be made and subsequently furnished to the bidder, will be deemed to have the effect of adding to, modifying, or otherwise varying from the written provisions of the invitation for bids (including, but not limited to specifications, drawings and written amendments to the solicitation)."

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In addition, the instructions to bidders on Standard Form 22 provided:

"Explanations to Bidders--Any explanation desired by a bidder regarding the meaning or interpretation of the invitation for bids, drawings, specifications, etc., must be requested in writing and with sufficient time allowed for a reply to reach bidders before the submission of their bids. Any interpretation made will be in the form of an amendment of the invitation for bids, drawings, specifications etc., and will be furnished to all prospective bidders."

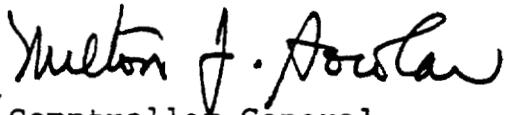
These provisions clearly put bidders on notice not to rely on oral statements that varied from the terms of the solicitation and that any interpretation of the solicitation would be only by written amendment. In such situations, we will sustain a protest only if it can be shown that as a result of erroneous oral advice, effective competition was not achieved. See Jensen Corporation, 60 Comp. Gen. 543 (1981), 81-1 CPD 524. In this case, 11 bidders other than Brickwood and Christos submitted reasonably competitive bids on either side of the government's estimate. Clearly, effective competition was achieved. Thus, if any bidder relied on the oral representation that the surfaces to be painted measured 776,800 square feet, despite the inclusion with the solicitation of scaled drawings and the solicitation's clear warning that oral explanations would not be binding, it did so at its own risk. See Blue Ridge Security Guard Service, Inc., B-280605.2, November 22, 1982, 82-2 CPD 464.

To the extent that the protester is contending that the drawings were defective because bidders could not determine from them the exact number of square feet to be painted, its contention is untimely. This allegation involves an alleged impropriety apparent from the solicitation. As such, our Bid Protest Procedures provide that any protest on this issue should have been filed prior to bid opening. 4 C.F.R. § 21.2(b)(1). Christos filed its protest here on April 28, well after the November 30 bid opening; it is therefore untimely and will not be considered. Fairchild Weston Systems Inc., B-211650, September 20, 1983, 83-2 CPD 347. In any event, while we

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think it would have been appropriate for the agency to have included in the solicitation, either on the drawings or elsewhere, the engineer's estimate of the total surface area to be painted, as indicated, it does not appear that the lack of this figure had a detrimental effect on the competition.

We deny the protest in part and dismiss it in part.

for 
Comptroller General
of the United States