



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: J.R. Cheshier Janitorial
File: B-225745
Date: April 29, 1987

DIGEST

1. Protest that requirement for the stripping and waxing of floors is ambiguous since it does not specifically state that all wax must be removed is denied. A requirement is ambiguous only if it may reasonably be interpreted in more than one way, and here the only reasonable reading of the requirement is that it provides for a result rather than a particular method of accomplishing that result.
2. Protest that requirement for grout cleaning should be separately priced and contain an estimate of the amount of work required is denied where agency has determined that grout cleaning is an integral part of floor cleaning and cannot be separated from that task.

DECISION

J.R. Cheshier Janitorial protests various requirements in invitation for bids (IFB) No. DACW68-87-B-0012, issued by the Army Corps of Engineers for janitorial services at Ice Harbor Lock and Dam, Franklin and Walla Walla Counties, Washington. Cheshier argues that a clause authorizing the government to require the contractor to terminate unsatisfactory employees does not adequately define what level of performance will be deemed unsatisfactory. Cheshier also contends that the requirements for stripping and waxing of floors as well as for grout cleaning are ambiguous and do not reflect the government's minimum needs. We deny the protest in part and dismiss it in part.

Cheshier's protest to our Office follows a protest to the agency. The contracting officer responded to the agency-level protest by issuing amendment No. 3 to the solicitation to change the provision dealing with employee removal and by denying the other bases of protest. Cheshier protested to our Office on the day before bid opening.

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Bids were opened as scheduled, and Cheshier's bid was the second highest of the 10 bids received.

Cheshier argues that section 17.2 of the solicitation is subject to abuse since it permits the agency "to demand the removal of any worker, regardless of his skill, upon the mere finding that some particular task was unsatisfactory."

The language to which Cheshier objects was revised in amendment 3 to the solicitation. Prior to amendment 3, section 17.2 provided:

"The COR [contracting officer's representative] may require the contractor to discontinue using any employee, in the performance of work, when such work is determined by the government to be unsatisfactory."

Section 17.2, as amended, now provides, however:

"Contractor shall provide adequate and qualified personnel to accomplish all janitorial services required under this contract. The contractor shall be completely liable for the actions of his personnel and their conformance to all applicable regulations. Violation of any regulations will constitute just cause for excluding such personnel from performing under this contract."

It appears that the agency has in effect addressed the protester's concern by deleting the reference to unsatisfactory work performance from the section. Moreover, the protester has not submitted any comment regarding the current solicitation language, so we have no basis upon which to consider this part of the protest. We therefore dismiss it.

Cheshier argues that section 23.1 of the solicitation, which provides for stripping and waxing of floors, is ambiguous and does not reflect the agency's minimum needs. Cheshier claims that in the janitorial services industry stripping a floor means removing the top layers of wax to eliminate scuff marks, old wax stains, and build-up. Section 23.1 provides: "All old wax stains, dirt, oil, water stains, calcium deposits, etc., shall be removed during stripping." The protester says that it knows, based on its prior performance of a contract for the same services at the same facility, that the agency interprets this requirement to mean that the floor must be stripped to

the original floor surface (i.e. that all wax be removed). Cheshier contends that because it knows the agency will require a higher standard of performance, while the other bidders are unaware of this, it will be underbid.

We do not think that the requirement for floor stripping is ambiguous. An ambiguity exists only if two or more reasonable interpretations of a provision are possible, J.R. Cheshier Janitorial, B-219550, Oct. 23, 1985, 85-2 CPD ¶ 445, and the protester has not persuaded us that this requirement can reasonably be interpreted in more than one way. We think that the requirement does not specify a particular method of stripping but simply states that the result of the process must be the removal of old wax stains, etc. The fact that Cheshier had performance problems under a prior contract which included a similar provision does not mean that the provision itself is ambiguous.

Finally, the protester argues in detail for the first time in its response to the agency report that the requirement for grout cleaning at section 23.9 should be separately priced and that the solicitation should have included an estimate of the amount of work needed. It is the agency's view that grout cleaning is an integral part of cleaning the floor and cannot be practically separated from that task. We have no basis upon which to disagree with the agency's view in this regard.

The protest is denied in part and dismissed in part.


Harry R. Van Cleve
General Counsel