



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Freedom Elevator Corporation
File: B-228887
Date: December 7, 1987

DIGEST

1. Where solicitation requires a firm to bid on every item including option years, a bid which fails to include prices for a second option year is nonresponsive where evaluation is to include option year prices. A nonresponsive bid may not be changed or corrected on the basis of post bid opening explanations.
2. A solicitation requirement is ambiguous when it is susceptible to two or more reasonable interpretations, however, a protest alleging an ambiguous solicitation provision must be based upon a reasonable interpretation of the disputed provision.

DECISION

Freedom Elevator Corporation protests the award to any other bidder of a contract for elevator maintenance and repair services at the Military Ocean Terminal, Bayonne, New Jersey. The award was made by the United States Army under invitation for bids (IFB) No. DAHC21-87-B-0013. Freedom argues that its bid was improperly rejected as nonresponsive. The protester contends that the rejection of its bid was the result of a solicitation ambiguity and that the award was otherwise improper because the Army evaluated the bids in a manner which differed from the method set forth in the IFB. As relief, Freedom requests that it be permitted to correct its bid or, in the alternative, that the requirement be resolicited.

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

Freedom's bid was rejected by the Army because that firm did not submit prices for a second option year as required by the IFB. Freedom concedes that it did not do so but contends that amendment 0002 to the IFB created an

040773

ambiguity because of unclear instructions and an unclear page numbering scheme.

The IFB solicited separate bid prices for elevator maintenance and repair services for a base year and 2 additional option years. The IFB advised bidders that to be responsive, they must bid on all items in the rate schedules and stated that the bids would be evaluated on the base year and all option years. Each of the pages of the IFB contained a typed page number in the upper right hand corner in the following form: "page 1 of 56," "page 2 of 56," etc. In addition, in the lower right hand corner of each page was a handwritten number--"1", "2", "3", etc. The two numbers did not correlate to each other. The typed page numbers started with the Standard Form 33 and continued to the last page--"page 56 of 56." The handwritten numbers started on the cover sheet of the IFB and continued to the final page--"58".

Amendment 0002 called for the deletion of IFB pages 8-23, 26, 27, 36, 37, 54 and 55 and the insertion of pages carrying the same numbers which were attached to the amendment. Each of the pages attached to the amendment had a typewritten number in the upper right hand corner as in the original IFB such as "page 8 of 56 revised." It also appears that these amended pages contained a handwritten number in the bottom right hand corner. The handwritten numbers appear to be sequential. Consequently, the handwritten numbers did not correspond to the typewritten numbers in the upper right hand corner of the page; for example, amended pages "8 of 56" and "9 of 56" contained in their lower right hand corners the handwritten numbers "1" and "2".

Freedom explains that in deleting pages from the IFB as required by amendment 0002 it relied upon the handwritten page numbers and not on the typed page numbers. By doing so, Freedom removed the IFB pages (pages 6 of 56 and 7 of 56) which contained the schedules for prices for the second option year and therefore did not submit the pages or prices for that option.^{1/} Freedom argues that the unclear instructions of amendment 0002 and the fact that the pages of the solicitation and amendment contained two different numbering schemes created an ambiguity which rendered the solicitation defective.

^{1/} Freedom's bid consisted of the entire bid package plus the amendment. Freedom wrote "delete" across the pages of the original bid package it sought to remove. Since the amendment instructions referred to the typed numbers there were no substitute pages for pages 6 and 7 of the IFB.

The Army responds that the solicitation requirements were clear and that it would be inappropriate to permit Freedom to correct a nonresponsive bid after bid opening. The Army further states that no ambiguity was created by amendment 0002 as the handwritten page numbers at the lower right hand corners of the pages were not part of the IFB but rather were for facilitating work at the printing plant. The agency argues that Freedom's interpretation of amendment 0002 and the IFB itself and its reliance on the handwritten page numbers was not reasonable. In this regard, the agency states that Freedom should have ascertained that the only way to continue a logical sequence in the pagination of the solicitation using the substituted pages from amendment 0002 was by following the typed page numbers.

A solicitation is not ambiguous unless it is susceptible to two or more reasonable interpretations. Energy Maintenance Corp., B-223328, Aug. 27, 1986, 86-2 CPD ¶ 234. We do not agree with the protester that its failure to submit prices for the second option year was the result of a reasonable interpretation of an ambiguous solicitation. While it is unfortunate that the solicitation contained the handwritten numbers, Freedom's actions here just were not reasonable.

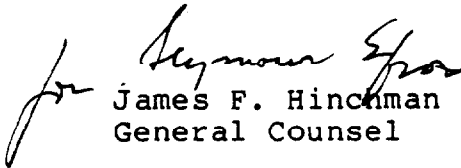
First, we think that the form of the typewritten numbers indicates that they were to govern. Their designations as "1 of 56," "2 of 56," etc. indicates that they were carefully drafted to avoid error. This is in contrast to the rather lightly handwritten single numerals (many of which are barely legible on the copies of the solicitation supplied by both the agency and the protester). Further, on many of the pages the typewritten numbers are in a special box on the form which is clearly set out to contain page numbers.

Moreover, we think that the amendment makes it clear that that the typewritten numbers were the operative numbers. The typewritten pagination in the upper right hand corner of the amended pages correspond with the instructions on the face of the amendment, "insert attached pages 8 through 23, 26, 27, 36, 37, 54 and 55." The handwritten numbers, which on most of the amended pages are barely legible and which start at "1" and end at "23", do not. There are, for example, simply no amended pages to insert in response to the instruction that pages 26, 27, 36, 54 and 55 be inserted if the handwritten numbers are followed. Hence, we cannot conclude that the protester acted reasonably in following those numbers rather than the page numbers typed on the top of the pages. In view of the fact that the two numbers obviously did not coincide, the protester should have contacted the agency prior to bid opening if it had any

doubt as to which number was to govern. See Fischer Marine Repair Corp., B-228297, Nov. 20, 1987, 87-2 CPD ¶ _____. Since the IFB here states that failure to bid on every item in the rate schedules including option year prices will cause rejection of the bid and that the low bid will be determined by evaluating the option prices, Freedom's bid which failed to include prices for a second option year was properly rejected as nonresponsive. The responsiveness of a bid must be determined from its face at bid opening, and it may not be changed or corrected on the basis of explanations offered by the bidder after bid opening. Master Security, Inc., B-225719, et al., Feb. 26, 1987, 87-1 CPD ¶ 226. Freedom's post bid opening explanation for its failure to submit prices and its offer to supply prices for the second option year cannot be used to make its bid responsive. USA Pro Co. Inc., B-224857, Jan. 30, 1987, 87-1 CPD ¶ 101.

Finally, Freedom argues that the agency did not follow the solicitation's evaluation factors in determining the low bid. We dismiss this argument without considering its merits, because there were two other bids submitted and Freedom, as a nonresponsive bidder, is not eligible for award and is therefore not an interested party under our Bid Protest Regulations. 4 C.F.R. § 21.0(a); Gladix Corp., B-222012, Mar. 11, 1986, 86-1 CPD ¶ 241.

The protest is denied in part and dismissed in part.


James F. Hincman
General Counsel