



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Kenny Grisham & Associates
File: B-234303
Date: May 16, 1989

DIGEST

Acceptance of the low bid which took no exception to the specifications, even though a portion of the specifications was defective, is not legally objectionable when no bidder was misled by the specifications, all submitted bids on the same basis, and the protester, who contends that it was unable to bid due to the defective specifications, has not shown that it was particularly affected by the defect.

DECISION

Kenny Grisham & Associates protests the failure of the Navy to issue an amendment correcting that portion of the specifications dealing with sliding doors contained in invitation for bids (IFB) No. N62922-89-B-6030, for a pre-engineered metal building at the Public Works Center, Subic Bay, Republic of the Philippines.

We deny the protest.

The IFB was issued on December 15, 1988, with bid opening scheduled for January 13, 1989. The solicitation listed federal specification RR-D-757B, door, metal, sliding and swinging; door frame, metal (flush and semiflush), as applicable to the solicitation. Further, paragraph C-8, stated that the manufacturer's standard door details for sizes and types as shown in drawings accompanying the IFB were applicable. On the other hand, subparagraph C-8.1 stated that sliding doors were to conform to federal specification RR-D-757B.

Since Grisham was unable to locate specification RR-D-757B he contacted the agency engineer about this problem and according to an affidavit filed by the agency engineer was told that the specification number referenced in the

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solicitation was incorrect and that the numbers had been transposed; the correct reference was RR-D-575B. Subsequently, the engineer found that the federal specification had been superseded by American National Standards Institute (ANSI) and/or Steel Door Institute (SDI) industry standards. Further, according to the engineer's affidavit, Grisham called again, the day before bid opening, and complained that he was unable to obtain one of the SDI standards. According to the engineer he informed Grishman that an amendment to the solicitation "might" be issued to cure the problem. The protester states that he was informed that an amendment "would" be issued. In any event, none was issued. Sixteen bids were received at the scheduled bid opening; the protester did not submit a bid.

Grisham argues that in view of the confusion in the IFB over what standard or specification was to govern the sliding doors to be installed in the building the IFB should have been amended and since it was not it now ought to be canceled. The protester maintains that the confusion made it impossible for it to submit an accurate bid and states the fact that the agency received 16 bids merely indicates that these bidders did not thoroughly read the specifications and that the agency cannot know for sure what it will receive in the way of sliding doors since each bidder can submit any type door it pleases.

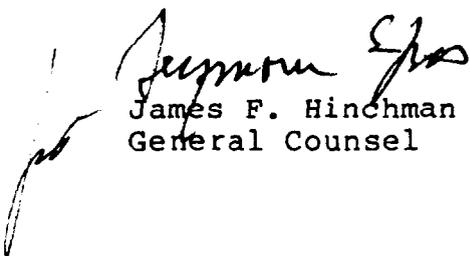
The agency does not seem seriously to dispute the protester's position that the solicitation was defective. The agency report admits that the number of the federal specification was transposed in the solicitation, while the agency engineer states that in any event that specification had been superseded by the industry standards. This confusion is reflected in the solicitation which at paragraph C-8 states that manufacturer's standards should govern the doors while subparagraph C-8.1 says that sliding doors should conform to the federal specification. As far as we can determine the only type of doors used in the building is a sliding-type door.

The agency bases its position that the solicitation should be allowed to stand on two grounds. First, it argues that Grisham in fact knew the standards which were actually to govern the doors and that it had sufficient time in which to obtain them prior to bid opening. Second, the agency maintains that the doors represent only a small portion of the cost of the building--about 5 percent--so the error was minor and had no effect on the competition. In support of this argument, the agency cites the fact that 16 firms were able to bid under the IFB. In this regard, the agency concludes that it obtained adequate competition and

reasonable prices and argues that the fact that one firm was unable to submit a bid does not present an adequate basis for canceling and resoliciting this procurement.

We agree with the protester that the portion of the solicitation pertaining to the doors was defective. We also think that it would have been appropriate for the agency to have issued an amendment clarifying the requirements. Nevertheless, the unrefuted record indicates that the doors represent only about 5 percent of the cost of the entire project and that the agency has received 16 bids. Further, there is nothing to show that the protester was at any particular disadvantage as compared to the other bidders and it appears to us that the bids submitted will result in a building which will meet government's needs. Consequently, we do not think that under these circumstances the agency is required to cancel the solicitation. See Abneers Corp., B-197261, Apr. 18, 1980, 80-1 CPD ¶ 274.

The protest is denied.



James F. Hinchman
General Counsel