

Cooper



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: TUMI International, Inc.

File: B-235348

Date: August 24, 1989

DIGEST

Agency did not have a compelling reason to cancel an invitation for bids (IFB) and resolicit, and a protest requesting reinstatement of the IFB is sustained, where the solicitation was not ambiguous when read as a whole, giving effect to all its provisions.

DECISION

TUMI International, Inc., protests the cancellation after bid opening of invitation for bids (IFB) No. XXXX-820108, issued by the Department of State for operation of a consolidated receiving point for handling freight going to international carriers for overseas shipment, including receiving, packing, delivery and storage services, in the Miami, Florida, commercial zone.

We sustain the protest.

The solicitation, issued on November 2, 1988, contemplated award of a requirements contract for a base year and 4 option years. Four firms submitted bids. Eagle Transfer, Inc., was the apparent low bidder, offering an aggregated evaluated price of \$1,569,720. TUMI, the incumbent, was the apparent second low bidder with an aggregated evaluated price of \$2,115,820.

Just after bid opening, TUMI notified State that Eagle's apparent low bid contained unbalanced prices on certain line items. Following further examination of Eagle's bid, State determined that Eagle's bid was so low on those line items as to suggest the possibility of error. Accordingly, State requested that Eagle verify its bid. Eagle responded that it had made no mistakes and verified its bid in writing.

However, while preparing to conduct a pre-award survey on Eagle, State discovered that Eagle had interpreted the solicitation in a manner that was inconsistent with the

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meaning State had intended. Under Eagle's interpretation, its prices for certain services called for by the IFB--delivery and stowing of items to be shipped--excluded export-packing the items, when in fact State intended that export-packing be included. As a result of this misinterpretation, Eagle stated that it could not perform at the prices it bid on eight line items. No other bidders misinterpreted the IFB. State concluded, upon further review, that the solicitation as issued was susceptible to more than one reasonable interpretation and therefore was ambiguous. Accordingly, State decided to cancel the solicitation and reissue it with the ambiguities clarified.

TUMI protested the proposed cancellation to State on March 28; its agency protest was denied on April 14. TUMI then protested to our Office on April 28. State notified bidders of the cancellation of the solicitation on May 4 and issued a revised IFB with bid opening scheduled for August 31.

TUMI argues that Eagle's interpretation of the solicitation was unreasonable because the IFB was clear with regard to the requirement for export-packing. TUMI contends that Eagle's interpretation renders parts of the IFB redundant when it is read as a whole. We agree.

An agency generally may cancel an IFB after bid opening and exposure of prices only if there is a compelling reason to do so. Shetland Properties of Cook County Limited Partnership, B-225790.2, July 1, 1987, 87-2 CPD ¶ 2. Whether cancellation is warranted on the basis of ambiguous or inadequate specifications is a decision of the contracting agency, whose determination will not be disturbed by our Office unless it is shown to be arbitrary, capricious, or not supported by substantial evidence. City Wide Press, Inc., B-231469, Aug. 10, 1988, 88-2 CPD ¶ 127. An ambiguity exists if specifications are subject to more than one reasonable interpretation. Energy Maintenance Corp., B-223328, Aug. 27, 1986, 86-2 CPD ¶ 234. Although a bidder's particular interpretation need not be the most reasonable one for a finding of ambiguity, that bidder's interpretation of the language of the solicitation at issue must be reasonable. To be reasonable, an interpretation must be consistent with the solicitation, read as a whole and in a reasonable manner. Vitro Servs. Corp., B-233040, Feb. 9, 1989, 89-1 CPD ¶ 136. When a dispute exists as to the actual meaning of a solicitation requirement, we will resolve the dispute by reading the solicitation as a whole and in a manner that gives effect to all its provisions. Energy Maintenance Corp., et al., 64 Comp. Gen. 425 (1985), 85-1 CPD ¶ 341.

Here, the IFB called for receiving, packing and transfer services, requiring the contractor to receive and prepare furniture, equipment and other supplies for overseas shipment by ship or air. Section B of the IFB sets out three primary categories of freight: freight requiring export-packing (line item 1); freight already domestic-packed (line item 2); and freight already export-packed (line item 3). Each line item listed three sub-items: loading the freight in or on a carrier's vehicle; delivery of the freight to a designated pier or receiving station; and stowing the freight into steamship containers to be delivered to a designated pier.

TUMI's protest concerns the first category of freight services, described in the header as follows:

"001. RECEIPT AND EXPORT-PACKING OF DOMESTIC-PACKED FURNITURE, FURNISHINGS, COMMISSARY ITEMS, SUPPLIES AND EQUIPMENT

Complete service of preparing Government-owned furniture, furnishings, commissary items, supplies and equipment for export shipment . . ."

Four line items--001A, 001B, 001C and 001D--follow the header. The line items differ according to the type of packing container to be used--wooden crates or corrugated containers--and whether the containers are to be furnished by the contractor or the government. Each of the four line items in turn is followed by sub-items for loading, delivering and stowing the freight.

To illustrate, section 001A. reads as follows:

"001A. EXPORT-PACKING OF FURNITURE, FURNISHINGS, COMMISSARY ITEMS, SUPPLIES AND EQUIPMENT IN CONTAINERS (E.G., WOODEN LIFT VANS/CRATES, ETC.) PROVIDED BY THE CONTRACTOR, AND TO INCLUDE THE FOLLOWING SERVICES:

"001A1. Loading the export-packed containers on or in carrier's vehicle. . . ."

"001A2. Delivery of the export-packed containers to steamship piers/carrier's freight stations

"001A3. Stowing the export-packed containers into steamship containers which the Contractor shall pick up from ocean carrier's facility"

There are spaces under 001A1, 001A2 and 001A3 for unit prices and extended prices for the basic year and 4 option years. No spaces for prices followed the underlined headers.

According to State, it intended that export-packing be included in each of the three delivery services, loading, delivery and stowing. Eagle, however, read the solicitation to require export-packing and loading under 001A1 (and 001B1, 001C1 and 001D1); delivery only under 001A2 (and 001B2, 001C2 and 001D2); and stowing only under 001A3 (and 001B3, 001C3 and 001D3). As a result, its prices for delivery and stowing services were substantially lower than the other bidders' prices. We find that Eagle's interpretation of the IFB was not reasonable.

As a preliminary matter, the plain language of the IFB shows that export-packing was to be included with each of the three delivery services listed. Specifically, the headers preceding line items 001A, 001B, 001C and 001D--which, as noted above, refer to export-packing of freight "to include the following services:"--clearly indicate that the export-packing requirement applies to all the services listed after the colon, not just loading, as Eagle assumed. Further, the estimates included in each line item of the quantities of freight to be loaded, delivered and stowed are different. Under line item 001A, for example, the IFB estimates 1,000 cubic feet of freight to be loaded, 20,000 cubic feet to be delivered, and 16,000 cubic feet to be stowed. Eagle's interpretation of the IFB as calling for "progressive" pricing--i.e., adding the cost of delivery only, or stowing only, to the cost of export-packing and loading--would be plausible only if the estimated quantities of freight to be loaded, delivered or stowed were the same.

In addition, under Eagle's interpretation line items 001A2 and 001C2 are identical (except for differing estimated quantities) and line items 001B2 and 001D2 are identical, thereby resulting in unit pricing duplication and creating an obvious redundancy in the pricing schedule. Similarly,

line items 003A, 003B, and 003C, which explicitly call for loading, delivering, and stowing of materials that are received already export-packed, would be superfluous under Eagle's reading of line items 001A to 001AD as requiring delivery and stowing services of already export-packed items.

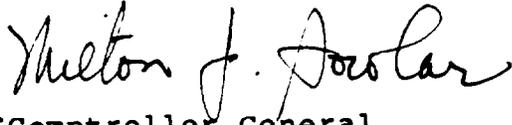
In its comments on the protest conference, State for the first time lists various other IFB provisions which in its view "were not stated in clear unambiguous language." State does not elaborate on its position, and states only that the listed provisions "may" require further revision. In fact, the revised solicitation issued by State includes changes only to the line items which are the subject of the protest, not the additional provisions listed in State's comments, and to date we are unaware of any other revisions to the IFB. Accordingly, the current record is insufficient to conclude that cancellation was justified on the basis of these additional alleged ambiguities. Further, State's contention that another bidder found the solicitation sections at issue ambiguous is not supported by the record. Rather than finding the IFB section requiring stowing ambiguous, the other bidder merely noted that it found that the terms of the IFB did not guarantee a minimum quantity for that line item, which might result in the contractor not recovering the fixed costs connected with the services.

From our reading of the solicitation as a whole, we conclude that the only reasonable interpretation of the IFB is as TUMI, the two other bidders, and State intended, with subsections read under the appropriate sections, and the main heading applying to all sections and subsections under it, a logical interpretation that gives effect to all parts of the solicitation. See Malkin Elecs. Int'l, Ltd., B-228886, Dec. 14, 1987, 87-2 CPD ¶ 586.

Since we have determined that the original IFB was not ambiguous, we conclude that State did not have a compelling reason to cancel the original IFB after bids had been exposed. See Federal Acquisition Regulation § 14.404-1(a)(1), (c)(1); Energy Maintenance Corp., B-223328, supra. In view of our findings, we recommend that the IFB be reinstated and award be made to the low, responsive, responsible bidder. In this regard, since Eagle's low bid was based on an erroneous interpretation of the IFB which excludes export-packing, and as a result, Eagle's prices are substantially lower than the other bidders' prices, Eagle's bid should be rejected.

See Mullins Protective Servs., Inc., B-208674, Dec. 21, 1982, 82-2 CPD ¶ 561. Accordingly, it appears that TUMI, the second low bidder, is in line for award. We also find that TUMI is entitled to the costs of filing and pursuing the protest, including attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.6(d)(1) (1988).

The protest is sustained.

A handwritten signature in cursive script that reads "Milton J. Fowler".

Acting Comptroller General
of the United States