

Morgan



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Titan Roofing, Inc.

File: B-236236.2

Date: January 10, 1990

DIGEST

Protester is not an interested party to maintain protest against the contracting agency's cancellation of a solicitation where protester's bid was nonresponsive to the solicitation.

DECISION

Titan Roofing, Inc., protests the cancellation of invitation for bids (IFB) No. 06-89-04, for roof replacement, issued by the General Electric Company, Defense Systems Division, a prime contractor operating a government owned, contractor operated facility for the Department of the Navy. Titan contends that the Navy improperly canceled the IFB, and that award should have been made to it as the low responsive bidder under the IFB.

We dismiss the protest.

The IFB, issued on April 19, 1989, contained two provisions governing the time that the awardee would be required to complete all work under the contract. At the front of the IFB, a clause entitled "COMMENCEMENT, PROSECUTION AND COMPLETION OF WORK" provided bidders a blank in which to propose a time for completing the work. The clause stated "[c]ommence and prosecute the work diligently and complete the entire work ready for use within ___ calendar days after required commencement of work." The clause further provided that: "The [s]ubcontract performance time of 150 calendar days will be computed starting 15 calendar days after the date of the [s]ubcontract Award." and that "This 15-day period is to allow for mailing of the notice of award and the [s]ubcontractor's submission and approval of the required bonds and Certificate of Insurance." Another

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provision of the IFB, paragraph 2A.61 of the general conditions, stated that the subcontractor shall be responsible to complete all work satisfactorily in 165 calendar days from date of award.

At the bid opening on May 23, the Navy received five bids. Titan submitted the low bid and had inserted 165 calendar days in the aforementioned blank in the front of the IFB. Three of the other bidders inserted 150 calendar days in the blank and one inserted 140 calendar days. After reviewing the manner in which bidders proposed time periods for completing the work, the contracting officer determined that the blank space created an ambiguity as to the time for completing the work and that it intended for the subcontractor to complete all work within 165 calendar days from the award date. Therefore, on July 12, the solicitation was canceled.

Titan argues that the Navy did not have a reasonable basis to cancel the solicitation because the IFB was not ambiguous regarding the time for completing the work and that it should receive the award since its bid was low and responsive to the IFB.

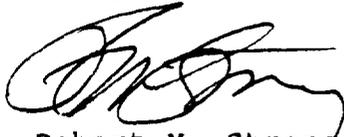
An agency may cancel an IFB after bid opening and exposure of prices if the specifications are ambiguous or interests of the agency or bidder have been prejudiced. Downtown Copy Center, 62 Comp. Gen. 65 (1982), 82-2 CPD ¶ 503; Energy Maintenance Corp., B-223328, Aug. 27, 1986, 86-2 CPD ¶ 234. An ambiguity exists if specifications are subject to more than one reasonable interpretation. TUMI Int'l, Inc., B-235348, Aug. 24, 1989, 89-2 CPD ¶ 174. 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. Id.

When read as a whole, we do not find that the blank space for bidders to insert a time for completing all work created an ambiguity in the IFB's requirement for the contractor to complete all work within 165 calendar days after the award date. As is clarified in the remainder of that provision, the contractor was required to commence work 15 days after the date of award to allow for providing acceptable bonds, which left only 150 days, as specified in the IFB, to meet the requirement for completing the contract within 165 calendar days after the date of award. In this regard, Federal Acquisition Regulation (FAR) § 28.102-1(b) (FAC 84-51) provides that the contractor shall furnish all

bonds before being allowed to start work on the contract.^{1/} Under the circumstances, we do not find the inclusion of a blank for proposing a performance time reasonably can be interpreted to have in any way altered the requirement that performance be completed 165 days from date of award. Instead, we find that bidders were required to either insert 150 calendar days or less in this blank or be rejected as nonresponsive.

Since Titan's bid proposed to complete all work 165 calendar days after the required commencement of work it was not obligated to complete the work 165 days from date of award and its bid was required to be rejected as nonresponsive. See AMP Inc., B-230120, Feb. 17, 1988, 88-1 CPD ¶ 163. Titan therefore would not be eligible for award under the IFB, even if the Navy improperly canceled the IFB. A party is not interested to maintain a protest if it would not be in line for award if the protest were sustained. See HTP Enters., Inc., B-235200, Apr. 27, 1989, 89-1 CPD ¶ 418; 4 C.F.R. § 21.0(a) (1989). Therefore, we find that Titan lacks the necessary direct economic interest necessary to be an interested party eligible to protest the cancellation. Id.

The protest is dismissed.



Robert M. Strong
Associate General Counsel

^{1/} All parties have acknowledged the applicability of the FAR to this procurement. Indeed, the IFB specifically advised bidders that performance and payment bonds shall be executed according to FAR § 28.102.