



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: H. Angelo & Company, Inc.
File: B-249412
Date: November 13, 1992

Michael C. Spring, Esq., Carey, Dwyer, Eckhart, Mason & Spring, P.A., for the protester.
John Pettit, Esq., and Capt. Michael J. O'Conner, Esq., Department of the Air Force, for the agency.
Behn Miller, Esq., and Andrew T. Pogany, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest claiming that solicitation pricing instructions misled protester into submitting nonresponsive bid prices for alteration line items is denied where (1) protester admits that it interpreted instructions--which enunciated statutory cost limitations of \$15,000 for a total house unit price and \$2,000 for alteration work unit price--as requiring the sum of both the repair work price and the alteration work price to be included in the \$15,000 total cost limitation; and (2) solicitation's pricing schedule, technical specifications, and drawings clearly established a separate alteration work unit price category.
2. Contention that solicitation was unduly restrictive because pricing instructions were misleading is untimely as it was not protested prior to bid opening.

DECISION

H. Angelo & Company, Inc. protests any award under invitation for bids (IFB) No. F02601-92-B0005, issued by the Department of the Air Force for military family housing repairs and alterations. Angelo contends that the solicitation's pricing instructions misled the protester into submitting a nonresponsive bid.

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

BACKGROUND

The IFB, issued on May 18, 1992, contained a unit price schedule and requested fixed-price bids to repair and perform alterations to the exterior of 68 houses located at

Davis-Monthan Air Force Base in Arizona. Bidders were to perform this work in accordance with detailed specifications and drawings that were part of the solicitation; in this regard, the solicitation identified "repair" work as all required repairs and modifications to the exterior building and patio; "alter" work (i.e., alterations work) encompassed constructing a new 5-foot brick trash enclosure wall for each housing unit.

The solicitation's pricing schedule contained eight items; for each item bidders were required to insert both a unit price and a total amount figure. The first two items on the schedule constituted a base bid: item No. 1 required bidders to complete 23 "Repair Exterior" subline items (unit and total amount) for a quantity of 63 houses; item No. 2 required bidders to complete 20 "Alter Exterior" subline items (unit and total amount) for those same houses. The remaining six items were classified as "additive" items and identified only one house per item; for each of these items, bidders were required to complete one "Repair" work subline item and one "Alter" work subline item. With regard to contract award, the solicitation contained the "Additive or Deductive Items" clause which provided that the low bidder for purposes of award would be the one "[o]ffer[ing] the low aggregate amount for the . . . base bid items, plus or minus (in the order stated in the list of priorities in the bid schedule) those additive . . . items that provide the most features" within the funds determined by the government to be available at the time of bid opening.

The Military Family Housing Statute, 10 U.S.C. § 2321 (1988), governs the appropriation of funds for military family housing construction and repair; under the Air Force Regulations, AFR § 86-1, which implement this statute, the Air Force is prohibited from designating more than \$15,000 for the overall unit price per house and a \$2,000 cost limitation per housing unit for alteration work, such as the trash enclosure alteration work called for by this solicitation. Throughout the pricing schedule, at the conclusion of each item listing, the solicitation set forth a corresponding "NOTE" which advised bidders about these two cost limitations.

For item Nos. 2 through 7, the solicitation set forth the following general note which provided:

"There is a statutory limitation of \$2,000 for Alter Work and \$15,000 or the total unit price for each house type. Any unit price bid greater than

\$2,000 and/or \$15,000 respectively will be considered as nonresponsive."¹

This general note also referred bidders to "NOTE 8" which appeared after the item No. 8 listing, at the bottom of the pricing schedule. In addition to restating the two statutory cost limitations, "NOTE 8" further provided that:

"Any bid with a line item unit price exceeding \$2,000 and/or \$15,000 respectively, for ITEMS 0001, 0002, 0003, 0004, 0005, 0006, 0007, and 0008 will be considered as nonresponsive."

The solicitation also advised bidders that "ANY BID EXCEEDING THE STATUTORY COST LIMITATION MAY BE REJECTED."

At the June 18 bid opening, nine bids were received. Angelo was the apparent low bidder; however, because Angelo's price for each alteration work subline item exceeded the \$2,000 statutory cost limitation for this work, the contracting officer rejected Angelo's bid as nonresponsive.

On June 29, 1992, Angelo protested its bid rejection to the contracting officer; by facsimile letter dated June 30, the contracting officer denied this agency-level protest. That same day, the contracting officer made award to Houston Construction Company. On July 13, Angelo filed this protest with our Office.

DISCUSSION

Angelo argues that its bid should not be rejected as nonresponsive since the general note, set forth for item Nos. 2 through 7, constitutes an ambiguous pricing instruction. Specifically, because the general note includes the term "and/or" in the last sentence of its cost limitation explanation, the protester contends that it was misled into concluding that only the \$15,000 cost limitation applied to this solicitation. In this regard, Angelo asserts that at the time it prepared its bid, it properly interpreted the solicitation "as requiring both the price for the repair work and the alter[ation] work to be included in the \$15,000" unit price cost limitation for each house; however,

¹For item No. 1, which contained only repair work subline items, the solicitation set forth the following note:

"There is a statutory limitation of \$15,000 on the unit price for each house type. Any unit price greater than \$15,000 will be considered as nonresponsive."

relying on the word "or," Angelo contends that it did not construe the solicitation as simultaneously imposing a \$2,000 cost limit on the alteration work portion of the total price since--according to the protester--a \$2,000 alteration work unit price limit improperly requires a bidder to perform the alteration work "at less than cost" and is therefore unduly restrictive. We find this argument without merit.

A solicitation must contain sufficient information to allow offerors to compete intelligently and on an equal basis. However, the mere allegation that a solicitation is ambiguous does not make it so; rather, a solicitation requirement is only considered ambiguous if it is susceptible to two or more reasonable interpretations. Pulse Elecs., Inc., B-243769, Aug. 2, 1991, 91-2 CPD ¶ 122. When a dispute exists as to the actual meaning of a solicitation requirement, our Office will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all its provisions. Id.

As noted above, this IFB clearly identified each item and subline item as either alteration work or repair work. We think it significant that Angelo does not claim to have misunderstood that the sum of both the alteration work and the repair work unit prices were to collectively comply with the \$15,000 total repair cost limitation for each house. The protester specifically admits--in both its initial protest as well as its comments on the agency report--that it interpreted the pricing instruction as requiring the combined cost of each house's alteration work and repair work to meet the \$15,000 limit. Based on its understanding of the \$15,000 total cost limit, we find Angelo's subsequent interpretation of the alteration work portion of the pricing instruction unreasonable.

The general pricing instruction note for item Nos. 2 through 7 unquestionably describes two distinct cost limitations: the \$2,000 amount is clearly labeled as a cost limitation "for Alter work" while the \$15,000 amount is expressly identified as a cost limitation "on the total unit price for each house type." In this regard, the solicitation's technical specifications and drawings further delineate the type and amount of trash enclosure work encompassed by the alteration work category. Under these circumstances, given the protester's understanding of the \$15,000 cost limitation, the plain language of the general pricing note, and the corresponding alteration work category evident from the face of the solicitation, we fail to see how Angelo could logically conclude that the \$2,000 alteration work cost limitation identified in the pricing instruction was inapplicable to this procurement.

To the extent that Angelo contends that the pricing instruction's \$2,000 alteration work cost limitation is unduly restrictive, we simply note that the protester was on notice of this basis of protest from the face of the IFB; as noted above, in addition to the plain meaning of the \$2,000 alteration work cost limitation, the solicitation clearly set forth the amount and type of work encompassed by this category. Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1992), require that protests based upon alleged improprieties, which are apparent prior to bid opening, must be filed with either the contracting agency or our Office prior to bid opening. Since this protest was not filed until well after the June 18 bid opening date, Angelo's argument that this pricing instruction is unduly restrictive or otherwise improper is untimely and will not be considered on the merits. See Henry Angelo & Co., Inc., B-241681, Feb. 13, 1991, 91-1 CPD ¶ 168.

The protest is denied in part and dismissed in part.


James F. Hinchen
General Counsel