



# Decision

**Matter of:** Concrete Systems, Inc.

**File:** B-259283

**Date:** March 22, 1995

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Richard D. Day for the protester,  
Richard E. Gaiser, Esq., Department of Transportation, for  
the agency.  
Paula A. Williams, Esq., and Michael R. Golden, Esq., Office  
of the General Counsel, GAO, participated in the preparation  
of the decision.

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## DIGEST

Protest that low bidders' equipment shelters were noncompliant with solicitation's stated requirements is denied where solicitation permitted bids for equipment shelters other than those specified.

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## DECISION

Concrete Systems, Inc. (CSI) protests any award by the Federal Aviation Administration (FAA), Department of Transportation under invitation for bids (IFB) No. DTFA06-94-B-50075, for the construction of a quantity of equipment shelters. CSI maintains that the shelters being offered by the two low bidders are noncompliant with several material requirements of the specifications and, therefore, the bids should be rejected.

We deny the protest.

The IFB contemplates award of a fixed-price contract to fabricate, assemble, and transport one equipment shelter to Puerto Rico and two to St. Croix, U.S. Virgin Islands. The IFB sets forth detailed specifications and drawings, including the protested specifications regarding expansion capability, manufacturing plant certification, and tension assembly. Amendment No. A001, issued on September 8, 1994, deleted the requirement in section 3.1 of the specifications

that "the building shall allow for future expansion" and added the following:

"Materials referenced in these specifications are for reference information only. Alternate design precast concrete buildings shall be approved if equal to the precast concrete building . . . . Alternate descriptions and methods of fabrication shall be submitted for approval."

The FAA received four bids by the September 20 bid opening. Alabama Easi-Set was the apparent low bidder with a total bid price of \$56,932; JoaQuin Manufacturing was second low with a total bid price of \$82,500. The protester submitted the third low bid of \$88,997. That same day, the contracting officer advised Alabama Easi-Set that its bid was significantly lower than the government estimate and the other bids received and the bidder was requested to review its bid for a possible mistake. By letter dated September 21, Alabama Easi-Set confirmed its price as bid. FAA proposes to make award to Alabama Easi-Set.

CSI filed an agency-level protest on September 26, and subsequently filed a protest with our Office on November 8. The protester alleges that Alabama Easi-Set and JoaQuin Manufacturing should be ineligible for award since as panel building manufacturers (as opposed to monolithic or modular manufacturers) their offered shelters do not have the required expansion capability.

Any bid that does not conform to applicable specifications shall be rejected. Federal Acquisition Regulation (FAR) § 14.404-2(b). A responsive bid represents an unequivocal offer to provide the exact thing called for in the IFB such that acceptance of the bid will bind the contractor in accordance with the solicitation's material terms and conditions. Mechanical Resources, Inc., B-241403, Jan. 30, 1991, 91-1 CPD ¶ 93.

Here, the amended IFB specifically authorizes the submission of alternate designs and alternate methods of fabrication and in fact advised that alternate bids would be considered. As such, amendment No. A001 invited bids from manufacturers like Alabama Easi-Set and JoaQuin Manufacturing (panel building manufacturers), provided their alternate methods of fabrication and design were approved by the agency. Further, the agency points out that this amendment specifically deleted the requirement that the shelters allow for future expansion in order to increase the competition for this acquisition. We simply fail to see how, in light

of this amendment, the shelters offered by the two low bidders can be considered noncompliant with a solicitation requirement which was deleted prior to bid opening.

CSI next argues that the two low bidders do not meet the solicitation requirement that their manufacturing plants be certified by the National Precast Concrete Association. This provision provides, at paragraph 3.3 of the specifications, that:

"Manufacturing [p]lants shall be regularly engaged in the construction and erection of precast concrete buildings; and are 'National Precast Certified Plants.' The manufacturer should be engaged in producing precast buildings for a minimum of three years."

The agency explains that the note contained in amendment A001, which basically states that materials referenced in these specifications are for reference only and that alternate designs, descriptions, and fabrications could be considered if equal to the buildings specified, again indicates the agency's intent to allow alternate building designs which meet the manufacturing standards required by paragraph 3.3 of the solicitation.

While we think the agency's intent could have been clearer, in light of the note applicable to the specifications, we agree with the agency that the apparent requirement that the manufacturing plant be "National Precast Certified" could be met by companies whose plants met similar standards of manufacture. Further, the note makes clear the agency's desire to obtain maximum competition, and we will not read a provision restrictively where it is not clear from the amended solicitation that such a restrictive interpretation was intended by the agency. See Aero Realty Co., B-250985, Mar. 2, 1993, 93-1 CPD ¶ 191; MAR. Inc., B-242465, May 6, 1991, 91-1 CPD ¶ 437.

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Here, the record indicates that Alabama Easi-Set is a licensed manufacturer of easi-set precast concrete buildings. Easi-Set Industries, (the patent owner for easi-set precast concrete buildings) requires manufacturers of its buildings to follow certain production and quality control procedures and conduct periodic visits and inspection of the licensed manufacturers' plants.

In sum, while paragraph 3.3 of the solicitation could have been clearer, we see no basis in the solicitation for restrictively interpreting the plant certification requirement so as to eliminate the two low bidders.<sup>2</sup>

The protest is denied.

\s\ Ronald Berger  
for Robert P. Murphy  
General Counsel

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<sup>2</sup>In its comments on the agency report, CSI asserts that the shelters offered by the two low bidders do not meet the tension assembly requirement as set forth in section 3.1 of the solicitation. This allegation, raised for the first time in its comments, is untimely. A protester may not introduce a new issue in its comments that it could have raised in its initial submission to our Office. Our Bid Protest Regulations do not contemplate the unwarranted piecemeal presentation of protest issues. See Rentech, Inc., 70 Comp. Gen. 165 (1991), 91-1 CPD ¶ 35. Since CSI did not raise this allegation in its initial protest and has offered no reason for the delay, we will not consider this ground of protest.