



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Window Systems Engineering

File: B-222599

Date: August 27, 1986

DIGEST

Contract award was improper where agency's intent to eliminate a solicitation requirement was not clearly communicated in a solicitation amendment, so that protester reasonably was misled as to the agency's actual needs into offering a more expensive system than it otherwise would have.

DECISION

Window Systems Engineering (WSE) protests the award of a contract to the Breland Company under invitation for bids (IFB) No. N62467-85-B-5527, issued by the Department of the Navy for the replacement of windows and screens in one of the buildings at the Naval Air Station, Dallas, Texas. WSE contends that, based on WSE's reading of the specifications, Breland's bid was nonresponsive and thus never should have been accepted because the company offered residential grade windows instead of the commercial grade called for by the IFB. Alternatively, WSE contends that it was misled by the specifications into bidding on the more expensive commercial grade windows, and that it thus did not have a fair chance to compete.

We sustain the protest on this second ground.

The IFB's general description stated that the work included removing existing windows, insulating the window cavities, installing new windows and screens, and painting the exterior and interior surfaces of the removed window spaces. In the section entitled "Replacement Windows," the IFB specified that all solicitation drawings were detailed using the EFCO Corporation "Trim-All" window replacement system. This system involves the removal of the old window and the installation of a fixed-position replacement window by placing a "panning frame" over the existing window frame and window sill, pulling this particular type of frame tight against the wood, and fastening it in place with screws. The new window is then lifted over the bottom of the panning frame and snapped into place by use of steel spring retaining clips. The section of the IFB further provided that EFCO's system would be the standard that any sample would be compared to, and also required that the contractor

furnish a sample window frame and sash to the contracting officer, before any replacement windows actually were ordered, for approval and comparison to the specified standard.

The IFB drawing for typical window detail, in addition to showing the details for the window frame, all of the trim around the window, and the window sill, showed what was labeled the "new panning window frame with screen." In the IFB drawing of typical window elevation, the Navy identified "new replacement panning frame window installed into exist[ing] wood frame." In an amendment, the Navy stated the word "panning" was to be deleted from these drawings.

Five bids were received at opening, with Breland's bid of \$16,888 being the lowest and WSE's bid of \$24,899 the second lowest. The Navy accepted Breland's bid.

PROTEST

WSE contends that the solicitation, by using EFCO's Trim-All system as the standard to which to compare offered replacement windows, specified a window with certain commercial grade standards for thickness of materials, window size, and types of components, since EFCO's system is commercial grade. Breland's window systems, according to WSE, are a lesser quality residential grade and, in that connection, do not include panning (among other things), as do all of EFCO's.

WSE states that it had been advised by a Navy contracting official, after WSE initially protested the award to the Navy, that the deletion of the word "panning" from the IFB drawings by amendment was intended to eliminate the requirement for panning and permit offers like Breland's. WSE protests that it believed that the IFB amendment deleting the word "panning" from the terminology on the IFB's drawings merely served to correct a grammatical error in wording rather than to change the scope of work. In this regard, WSE alleges that the term "panning window frame with screen" was erroneous in the first place because while there is a window frame panning, there is no such thing as a "panning window." WSE claims that it thus could not assume from the simple deletion of the word that window panning for the installation of fixed-position replacement windows no longer was required, particularly since that would reflect such a dramatic change in the scope of work that the entire window replacement project would have had little resemblance to that specified in the IFB before the amendment. WSE maintains that had it not read the IFB as clearly requiring a panning-inclusive window comparable to the commercial grade model described by the EFCO Trim-All system, WSE would have offered a less expensive window system than it actually did.

NAVY RESPONSE

The Navy argues that WSE's interpretation of the specifications is unreasonable because it renders meaningless the amendment's deletion of the word "panning" from the drawings of typical window detail and elevation. The Navy contends:

"The window detail should have stated 'new panning and window frame' and 'new replacement panning and frame window.' As originally written, the drawing details were essentially meaningless, hence the need for clarification. By deleting the word 'panning' in lieu of adding 'and' the intention was to delete any reference to 'panning' in the solicitation. This was accomplished, inasmuch as the word only appears on the drawings."

The Navy further notes that although EFCO's Trim-All system does include the installation of a panning frame, this clearly is distinct from the other aspects of the installation of a replacement window. Also, included with the Navy report is a memorandum from its engineering division stating that deletion of the requirement for a panning frame meant that comparison to EFCO's Trim-All system for commercial grade replacement windows no longer was required at all.

DISCUSSION

It is clear from the record that installation of replacement windows without panning frames and the grade of replacement windows Breland offered, were acceptable to the Navy. The question for our consideration therefore is whether the specifications adequately reflected the agency's needs in these respects or whether, as WSE argues, they required a more expensive item. If the specifications reasonably described only a residential grade replacement window without a panning frame, then the award was proper, since Breland's bid was low. If, however, WSE's interpretation of the specifications is reasonable, then the specifications misled WSE into bidding a more expensive replacement window than it had to.

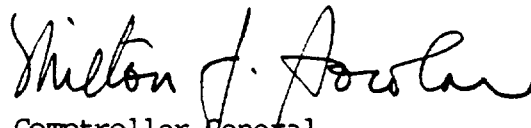
We are unable to conclude that the amended IFB described a residential grade window without a panning frame. While we do not dispute the Navy's position that the labels on the IFB's drawings should have had the word "and" separating the new panning from the window frame, we do not believe the amendment clearly advised bidders that the deletion of the word "panning" was intended to cure this deficiency and at the same time eliminate the requirement for a panning frame in the replacement windows. The amendment made no changes to the drawings themselves, so that this type of frame remained illustrated on them. Further, the IFB specification identifying the EFCO Trim-All system as the standard for window replacement was not modified so as to eliminate the particular part of the system involving the installation of a panning frame. Finally, we note that the Navy apparently intended the deletion of the word "panning" to mean the elimination of every aspect of the EFCO system, including the thickness of replacement materials, the size of the replacement windows and the types of replacement components; in our opinion, this intent could not have been inferred from the simple deletion of one word.

Consequently, we believe that WSE's interpretation of the amended solicitation as referencing a window like the stated standard EFCO Trim-All replacement window was reasonable.^{1/}

WSE's protest on this issue is sustained.

We cannot recommend any corrective action because the awarded contract has been fully performed. (The protest was filed more than 10 days after the award. See 4 C.F.R. § 21.4(b) (1986).) Nevertheless, as a result of the Navy's failure to communicate its actual needs adequately, WSE was deprived of an opportunity to compete fairly for the award. In these circumstances, we find that WSE is entitled to recover the costs of filing and pursuing the protest and the costs of preparing its bid in response to the IFB, see 4 C.F.R. § 21.6(e), and we are so advising the Secretary of the Navy. The protester's claims for these costs should be submitted directly to the agency.

WSE also claims the anticipated profits it would have received had it been awarded the contract. There is no legal basis, however, for allowing an unsuccessful bidder to recover lost income or anticipated profits, even if the bidder should have received the award. See Power Systems—Claim for Costs, B-210032.2, Mar. 26, 1984, 84-1 C.P.D. ¶ 344.

for 
Comptroller General
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^{1/} The Navy argues that if WSE thought the amended solicitation was ambiguous it should have sought clarification prior to bid opening. Ordinarily, alleged ambiguities in the language of a solicitation must be protested to our Office before the solicitation's closing date. However, where, as here, the protester reasonably is unaware of any interpretation other than its own, the firm cannot be charged with knowledge of an ambiguity that had to be protested before the closing date. See Skytop Plastics, Inc., B-207022, Oct. 15, 1982, 82-2 C.P.D. ¶ 340.