

(Spiegel)



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: J.A. Reyes Associates, Inc.

File: B-230170

Date: June 7, 1988

DIGEST

1. Protest against allegedly ambiguous specifications, filed after bid opening, is timely because protester did not become aware of agency interpretation of specifications until after bid opening.
2. Protest against allegedly ambiguous specification is sustained where agency is willing to accept bid based on fewer staff hours than protester offered under protester's reasonable interpretation of specification.
3. The ninth low bidder is an interested party under our Bid Protest Regulations where remedy sought for allegedly ambiguous specification is not award, but resolicitation.

DECISION

J.A. Reyes Associates, Inc., protests the proposed award of a contract to Morman Development Corporation under solicitation No. DTFA03-87-B-70031, for telephone operator services at the Federal Aviation Administration (FAA) Technical Center in Atlantic City, New Jersey. Reyes contends Morman bid on a different basis than Reyes and other bidders because the specifications were ambiguous.

We sustain the protest.

The solicitation, for a 1-year contract with two 1-year priced options, resulted in the following bids being received on the November 18, 1987, opening date:

<u>Bidder</u>	<u>Price</u>
Morman	\$132,221.92
K.J. Cook	138,200.00
TECOM	160,885.54
FedServ	189,380.00
Crawford Technical	192,746.00

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<u>Bidder</u>	<u>Price</u>
Sun Temporary	\$195,500.00
Air Exec, Inc.	207,682.00
Aces Services, Inc.	252,140.00
Reyes	264,588.00
Automation Mgmt. Services	275,760.00

After bid verification and a pre-award survey, the FAA was preparing to award the contract to Morman when, on January 14, 1988, Reyes protested to the FAA. Reyes contended that it had just learned that Morman had based its bid on furnishing one full-time and two part-time operators, contrary to the statement of work in the solicitation. Reyes argues that the solicitation requires three full-time operators. Prior to receiving an answer from the FAA, Reyes filed a protest with our Office in February.

Initially, the FAA argues that the protest to the FAA was untimely and that Reyes is not an interested party. The FAA contends that if Reyes felt the specifications were ambiguous, it should have protested prior to bid opening under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1988), because the issue concerns an alleged solicitation impropriety apparent from the face of the solicitation. We disagree. Reyes believed its interpretation of the requirements was proper. It was only when it became aware that the FAA was about to award the contract to Morman based on Morman's furnishing fewer personnel than Reyes finds are called for by the solicitation, did Reyes know its basis of protest. Therefore, we find the protest timely filed.

Next, the FAA states that Reyes, the ninth low bidder, is not an interested party under 4 C.F.R. § 21.0(a) of our Bid Protest Regulations because it would not be in line for award if its protest were sustained. However, Reyes is not requesting award of the contract, but a resolicitation under revised specifications. Therefore, Reyes has the requisite interest to file a protest.

The solicitation, under paragraph C.1, stated that the scope of the contract was to "provide the personnel required to operate the FAA Technical Operation and Facsimile Operations Function from 7:30 a.m. until 5 p.m., five-days a week (Monday through Friday). Paragraph C.14 noted "The Contractor shall provide for adequate staffing to accomplish the functions of this PWS [Performance Work Statement]."

Paragraphs C.1.4.1 and C.1.4.2 read as follows:

"1.4.1 - Supervisor

The Contractor shall provide a supervisor to overlook the telephone operations and to be responsible for the overall management and coordination of the Telephone Operations Center. The supervisor will have regular consultations with the COTR."

"1.4.2. - Other

Along with the supervisor, two telephone operators are required to effectively administer the Telephone Operations Center. In the event that the supervisor is absent, the telephone operators are responsible to make sure the Telephone Operations Center runs efficiently."

Reyes argues that reading the solicitation in its entirety requires a bidder to furnish three employees, 8 hours each day and from the range of bids received, it appears that not all bidders were bidding on the same basis.

The FAA, in its report on the protest, acknowledges that the contractor must provide a supervisor and two telephone operators. The FAA does not dispute that Morman, in its bid verification, confirmed that it was offering one full-time and two part-time employees.

While the FAA places emphasis on part-time vs. full-time status in its report, such employment status is irrelevant. Whether a contractor uses three full-time or six part-time employees to meet the required hours of coverage during contract performance is up to the contractor. However, the specifications clearly require three employees, a supervisor and two operators, on duty from 7:30 a.m. to 5 p.m. Morman's bid is based on only two employees on duty during the required hours.

Since the FAA is willing to accept Morman's bid, and we find Reyes' reading of the specifications to be reasonable, we find that the solicitation overstated the government's minimum needs and sustain the protest. McCotter Motors, Inc., B-214081.2, Nov. 19, 1984, 84-2 CPD ¶ 539. Accordingly, the FAA should resolicit the requirement with a statement of work which accurately reflects its minimum needs.

for Milton J. Aroskar
Comptroller General
of the United States