

Zelkowitz



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Westinghouse Electric Corporation

File: B-230621; B-230622; B-230623; B-230624; B-230625

Date: July 8, 1988

DIGEST

Allegation that solicitation was ambiguous as to whether environmental hazard insurance requirement allowed insurance with an aggregate limit is denied where the protester fails to present sufficient evidence to establish that its bid may have been low had its bid been prepared on the same basis as the awardee.

DECISION

Westinghouse Electric Corporation protests the award of three contracts, and the proposed award of two others, to Sun Environmental Company, Inc., under five different solicitations issued by the General Services Administration (GSA) as part of its ongoing effort to remove and replace PCB-contaminated transformers presently installed at various federal building sites.

We deny the protests.

The five solicitations sought bids for work to be performed at the following sites, all located in Washington, DC: Agriculture South and Forrestal Buildings (invitation for bids (IFB) No. GS-11P88MKC015); the Ariel Rios Building (IFB No. GS-11P88MKC108); the Central Office Building (IFB No. GS-11P88MKC0109); the U.S. Courts Building (IFB No. GS-11P88MKC0120); and the Central Heating Plant (IFB No. GS-11P88MKC0122). Common to each of these solicitations was the following insurance requirement:

"Hazardous Material-Catastrophic Insurance-
Environmental Impairment Expense Insurance: The contractor shall carry environmental impairment expense insurance to cover the cleanup of mishaps involving the . . . PCB fluid and the transformer

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carcasses. The coverage shall be a minimum of \$2,000,000 per occurrence for all projects under \$500,000 in total value; a minimum of \$3,000,000 per occurrence for all projects having a total value between \$500,001 and \$1,000,000 and a minimum of \$5,000,000 per occurrence for all projects having a total value greater than \$1,000,000"

Westinghouse construes this insurance provision as only specifying the minimum amount of per occurrence coverage required, and not allowing for aggregate ceilings or "caps" for the purpose of limiting overall liability. Westinghouse initially asserted that GSA had actual knowledge that Sun would not, or could not, comply with this insurance requirement for the procurements in question since its insurance policy furnished in connection with prior contracts with identical insurance requirements contained aggregate limits. Westinghouse thus argued that GSA's determination that Sun was a responsible vendor could not have been made in good faith. GSA took the position in its report that the insurance provision in fact allowed for submission of insurance policies containing aggregate limits, and Sun then refocused its protest, arguing that the solicitation was ambiguous; Westinghouse asserts that had it been aware that insurance policies could include aggregate limits, a less expensive type of coverage, it would have lowered its bid prices accordingly.

As a general rule, offerors must be given sufficient detail in a solicitation to allow them to compete intelligently and on a relatively equal basis. The specifications must be free from ambiguity and describe the contracting agency's minimum needs accurately. Interface Flooring Systems, Inc., B-225439, Mar. 4, 1987, 87-1 CPD ¶ 247. An ambiguity exists if a specification is subject to more than one reasonable interpretation when read in the context of the solicitation as a whole. United States Elevator Corp., B-225625, Apr. 13, 1987, 87-1 CPD ¶ 401.

We agree with Westinghouse that the IFB provisions do not indicate GSA's intention to permit aggregate limits on environmental insurance. Although GSA and Sun argue that reading an aggregate limit into IFB insurance requirements reflects an industry standard, the record contains no evidence supporting this position, and Westinghouse vigorously argues that any industry standard that applies to insurance generally does not apply to environmental hazard insurance, which is a unique and relatively new form of

coverage. Moreover, GSA concedes that when drafting the insurance provision in question, it actually intended to require environmental hazard insurance without aggregate ceilings, and modified this view only upon discovering that firms had considerable difficulty in obtaining policies with unlimited coverage.

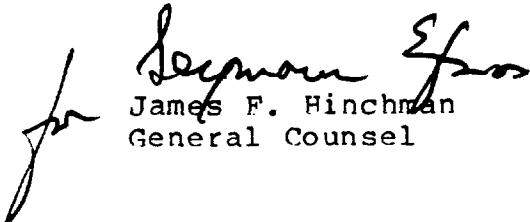
On the other hand, even though the permissibility of aggregate limits on environmental hazard insurance was not clear, the record does not indicate that Westinghouse would have bid significantly differently had it been aware that aggregates were acceptable.

First, although Westinghouse states by affidavit that its bid was based on insurance without aggregates, Westinghouse has not furnished us a copy of its policy (despite our specific request), or any other tangible evidence supporting its claim.

Second, even if we accept Westinghouse's unsupported statement as correct, there is no evidence that would support a finding that the firm's bid was affected materially. The only evidence furnished by Westinghouse in this regard is an affidavit of an Operations Manager (who was responsible for pricing different aspects of Westinghouse's bid), stating only that, for each of the five solicitations, "the bid prices overall were higher than they would have been in normal circumstances, due to several factors, one of which was the unlimited [environmental hazard] insurance coverage." (Emphasis added.) This affidavit is not sufficient to show prejudice, since it does not contain a breakdown of Westinghouse's bid prices; the portion of these prices attributable to insurance costs as a whole, let alone the portion attributable to the uncapped environmental hazard insurance, was not documented. As a result, we can conclude only that Westinghouse's reading of the subject insurance requirement was one factor in Westinghouse's higher bid requirement; we cannot conclude that the insurance requirement was the principal factor or that the insurance requirement had a significant enough cost impact that it possibly resulted in Westinghouse being displaced as the low bidder under any of the five solicitations. Again, this nonspecific affidavit is all Westinghouse furnished despite our specific request for documentary evidence of some sort establishing the impact of the insurance requirement on the firm's bid. Under these

circumstances, we have no basis upon which to sustain the protests. See SPM Mfg. Corp., B-229844, Apr. 13, 1988, 88-1 CPD ¶ 363.

The protest is denied.


James F. Hinchman
General Counsel