



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Sletager, Inc.

File: B-233350

Date: February 17, 1989

DIGEST

Protest against cancellation of solicitation after bid opening is denied where the specifications were ambiguous and award would not meet the government's minimum needs. This circumstance constitutes a compelling reason for canceling the solicitation.

DECISION

Sletager, Inc., protests the cancellation after bid opening of invitation for bids (IFB) No. DACA67-88-B-0068, issued by the United States Army Corps of Engineers, Seattle District, for the exterior painting of certain housing at Old Hillside Family Housing, Fort Lewis, Washington. Sletager contends that it should have been awarded the contract because the Corps did not have a compelling reason to cancel the IFB.

We deny the protest.

The IFB was issued on August 15, 1988. On September 9, the Corps issued amendment No. 0001. Among other things, the amendment deleted paragraph 1.2.2.2.1 which required caulking of existing window frames and sills on exterior sides at the Greenwood and Broadmoor areas and caulking interior sides of all windows in residences at the Davis Hill and Madigan housing areas. The intended purpose of deleting the paragraph was to remove the erroneously listed Greenwood, Broadmoor, and Madigan housing areas from the solicitation because the IFB was not intended to cover work at areas other than the Old Hillside and Davis Hill housing areas. Although the amendment deleted the requirement for interior and exterior caulking at specific areas, the Corps still intended for bidders to compute their bids on providing interior and exterior caulking at the Old Hillside and Davis Hill housing areas. This requirement for caulking was contained in sections 07920 and 09900 of the IFB.

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After several subsequent amendments, the bid opening was held on September 22. The low bid was \$353,800 and Sletager's bid was next low at \$546,725. However, the low bid was significantly lower than the government estimate of \$1,136,400. Because of the difference between the low bid and the government estimate, the Corps requested the low bidder to verify its bid and the low bidder explained that its price did not include interior and exterior caulking. Since there was no clear and convincing evidence of the low bidder's mistake, the Corps rejected the low bid.

Since Sletager's bid also was significantly lower than the government estimate, the Corps also requested that Sletager verify its bid. In explaining its price, Sletager stated that its bid did not include interior and exterior caulking. However, Sletager contended that the IFB did not require interior and exterior caulking. After reviewing the IFB specifications, the contracting officer determined that bidders were confused about the requirement for interior and exterior caulking because all of the remaining bids also were below the government estimate. Based on this ambiguity in the specifications, the contracting officer canceled the solicitation.

Sletager contends that the IFB did not require bidders to provide interior or exterior caulking because amendment No. 0001 deleted the requirement and no requirement for interior or exterior caulking is identified in the IFB painting schedule or in the bold print on the technical drawings where bidders were cautioned to accomplish only the work in bold print. However, Sletager states that its price did include exterior caulking because this is standard practice on exterior paint jobs. Sletager argues that it is entitled to the award because all bidders acknowledged the amendments and bid on the same requirements and because the award would result in a binding contract that would satisfy the needs of the government without violating the rules of sealed bidding, citing Williams Elevator Co., B-210049, Sept. 15, 1983, 83-2 CPD ¶ 327; Twehous Excavating Co., B-208189, Jan. 17, 1983, 83-1 CPD ¶ 42; Suburban Industrial Maintenance Co., B-188179, June 28, 1977, 77-1 CPD ¶ 459.

Because of the potential adverse impact on the competitive bidding system of canceling a solicitation after bid prices have been exposed, a contracting officer may cancel an IFB after bid opening only where there is a compelling reason for doing so. City Wide Press, Inc., B-231469, Aug. 10, 1988, 88-2 CPD ¶ 127. The failure of a solicitation to set forth specifications adequate to meet the agency's minimum

needs constitutes a compelling reason to cancel a solicitation under Federal Acquisition Regulation § 14.404-1(c)(1) (FAC 84-5). Hebco, Inc., B-228394, Dec. 8, 1987, 87-2 CPD ¶ 565. However, the use of deficient specifications is not sufficient justification where an award under the solicitation as issued would serve the actual needs of the government and would not prejudice the other bidders. Hebco, Inc., B-228394, supra.

Here, we find that the Corps properly canceled the solicitation because amendment No. 0001 created an ambiguity in the specifications which, if an award were made, would result in either not meeting the government's minimum needs or prejudicing the other bidders. Although, amendment No. 0001 deleted the requirement for interior and exterior caulking and the requirement is not mentioned in the IFB painting schedule or drawings, the IFB in sections 07920 and 09900 requires interior and exterior caulking. Section 07920, Caulking and Sealants, paragraph 2, stated that interior window caulking size shall be 1/4-inch deep and further that caulking materials used on the interior and exterior shall be approved by the Food and Drug Administration. Section 09900, Maintenance and Surface Preparation For Exterior Painting, in paragraph 1, stated that this work includes maintenance, repair, caulking and surface preparation of all exterior surfaces to be painted and interior caulking. Paragraph 2.5 of section 09900 required caulking all interior window frames. In view of these sections requiring caulking and amendment No. 0001 deleting caulking, we find that the specifications were ambiguous, that is, subject to more than one reasonable interpretation. See Westinghouse Electric Corp., B-217455, Aug. 30, 1985, 85-2 CPD ¶ 251. As pointed out above, Sletager reads the amended IFB as not requiring caulking, while the Corps points to clauses of the IFB which it contends require caulking.

The Corps states that an award to Sletager would not meet the agency's minimum needs because Sletager does not intend to, and is not bound to, provide interior caulking, and that caulking is needed to prevent moisture problems in kitchen and bathroom areas. Since contracting officials, not competing firms or our Office, are most familiar with the conditions under which supplies or services will be used, we do not question the agency's determination of its minimum needs absent a clear showing that the determination was arbitrary or unreasonable. Snow White Cleaners and Linen Supply, Inc., B-225636, Mar. 26, 1987, 87-1 CPD ¶ 347.

While Sletager questions the need for the caulking and the effectiveness of this procedure in eliminating moisture problems, we do not find that its conflicting opinion demonstrates that the Corps requirements are unreasonable. Id.

We find that the ambiguity in the specifications provided a sufficient basis for canceling the solicitation, since it is not clear that an award under the solicitation would meet the governments needs.

The protest is denied.


James F. Hinchman
General Counsel