



Comptroller General

of the United States

Washington, D.C. 20548

Coles

Decision

Matter of: Precision Dynamics, Inc.

File: B-237293

Date: January 23, 1990

DIGEST

1. Solicitation provision is not ambiguous where its meaning is clear and an alternate interpretation suggested by protester--that an explanatory note in one exhibit of the solicitation also applied to another, different exhibit simply because both exhibits contained asterisks--is clearly unreasonable.
2. Protest alleging solicitation impropriety is untimely where not filed prior to closing date for receipt of proposals.

DECISION

Precision Dynamics, Inc., protests the award of a contract to Dresser Industries, Inc., under request for proposals (RFP) No. N00102-89-R-0049, issued by the Navy for the refurbishment of submarine main feed pumps and motors. Precision, the highest priced offeror and the incumbent, challenges the Navy's evaluation of its price, contending that the proposal was evaluated contrary to the firm's intention as a result of an ambiguity in the RFP.

We deny the protest in part and dismiss it in part.

The RFP called for prices for certain planned replacement parts and certain contingency replacement parts for main feed pumps and motors. In this regard, exhibit B listed the planned replacement parts and noted with an asterisk that the quantities listed for items B001 and B002, ringless impellers, applied only to pumps to be repaired having ringed impellers; this reflected the agency's plan to replace all ringed impellers with ringless impellers. With regard to pumps already having ringless impellers, exhibit C called for prices for the impellers--which would be used only if necessary to replace the existing defective ringless impellers--as contingency replacement parts. These parts

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were listed in exhibit C, which contained two references with asterisks. The first reference was identified at the bottom of the exhibit as the probability of usage factor or POUF; the second reference--which had 2 asterisks--advised offerors that 1 percent was the POUF factor for the ringless impellers.

Precision's proposal did not contain any prices for the impellers on exhibit B. Instead, Precision placed an asterisk in the unit price section for these planned replacement parts, stating that they were "priced under contingency replacement parts [exhibit C]."

After receiving Precision's proposal, the contracting specialist contacted Precision to clarify its apparent intention that the prices it quoted on exhibit C for contingency replacement parts were to be listed as the same prices for exhibit B's planned replacement parts. Although Precision verbally confirmed that it intended to offer the same prices for the impellers on exhibit B as on exhibit C, the contracting officer requested that Precision confirm its prices in writing by specifically entering prices for items B001 and B002. Precision confirmed its prices for these parts by letter dated August 4.

Precision's protest rests primarily on its allegation that the Navy's use of asterisks on both exhibits B and C created an ambiguity in the solicitation which affected how Precision calculated its prices for the impellers. In this regard, Precision claims that it interpreted exhibit B to call for application of the POUF factor listed on exhibit C because both exhibits contained asterisks. There was one asterisk placed beside the impellers on exhibit B's planned replacement list (explained by a notation at the bottom of the exhibit as referring only to pumps having ringed impellers), and another asterisk on exhibit C's contingency replacement parts list (explained by a note on the bottom of the exhibit stating that the acronym "POUF" means probability of usage factor). Despite the distinct explanatory notes on both exhibits, Precision maintains that it interpreted the asterisk in exhibit C as applying the POUF factor referred to by the asterisk to exhibit B. According to the protester, if it had known that the impellers on exhibit B were not subject to the POUF factor listed on exhibit C, it would have drastically reduced its prices for the impellers on exhibit B.

The mere allegation that a solicitation is ambiguous does not make it so. Telelect, Inc., B-224474, Sept. 25, 1986, 86-2 CPD ¶ 355. A solicitation is ambiguous in a legal sense only where, when read as a whole, it is susceptible of

two or more reasonable interpretations. The Owl Corp., B-224174, Dec. 23, 1986, 86-2 CPD ¶ 706. Our Office will reject allegations concerning ambiguous solicitation provisions where those allegations are based on an unreasonable interpretation of the solicitation. American Indus., B-223530, Oct. 15, 1986, 86-2 CPD ¶ 429.

Here, we find nothing in the solicitation supporting Precision's interpretation that the POUF factor listed on exhibit C was to be applied in pricing the impellers listed on exhibit B. Precision's interpretation is based solely, and in our view unreasonably, on the Navy's use of an asterisk on two different exhibits. In this regard, there is no logical connection between these two exhibits because they were located in separate sections of the RFP with distinct headings, "planned replacement parts list" and "contingent replacement parts list." Further, the asterisks on exhibit B clearly referred to the explanatory note at the bottom of that exhibit, just as the asterisk on exhibit C referred to the explanatory note at the bottom of that exhibit. In addition, exhibit C had a separate column for POUF which was not included in exhibit B, and contained another reference with two asterisks stating that the POUF was to be applied only with regard to repairs of pumps already equipped with ringless impellers. This being the case, the asterisk on exhibit B in no way purported to direct offerors to structure their prices for the impellers by using any POUF factor.

Precision also contends that the Navy's characterization of the impellers listed on exhibit B as planned parts was improper because the need for these parts is actually contingent on whether the pumps to be repaired have ringed impellers. We will not consider this basis of the protest. Our Bid Protest Regulations require that protests based upon alleged improprieties on the face of a solicitation be filed before the closing date for receipt of offers in order to be timely. 4 C.F.R. § 21.2(a)(1) (1989). Here, the solicitation clearly characterized the impellers on exhibit B as planned replacement parts. Instead of raising this allegation before the closing date, Precision elected to participate in the procurement, and filed this protest only upon learning that it was not the successful offeror. Accordingly, this basis of the protest is dismissed as untimely. In any event, we see no basis to question the agency's position that the impellers on exhibit B were

considered to be "planned" parts in light of the agency's plan to replace all pumps which are received for repair with ringed impellers with the ringless impellers called for by exhibit B.

The protest is denied in part and dismissed in part.

JFH
James F. Hinchman
General Counsel