



Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: Mobile/Modular Express, Inc.

File: B-250776

Date: December 30, 1992

Kenneth L. Zuromski, for the protester.

James K. White, Esq., Department of Commerce, for the agency.

Barbara R. Timmerman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Including in solicitation requirement that offeror comply with applicable Rhode Island codes does not, by itself, make the code applicable. Contractor's compliance with state code is a matter for resolution by the contractor and the state or local authorities, not by federal officials.

DECISION

Mobile/Modular Express, Inc protests the award of a contract to Roger Carter Corp. under invitation for bids (IFB) No. 51-EANF-2-00085, issued by the Department of Commerce for a prefabricated building. Eight bidders responded to the IFB, a small business set-aside. Carter submitted the low bid; Mobile/Modular was the second low bidder. We deny the protest.

The IFB required the contractor to deliver and set up the building at the Northeast Fisheries Center, Narragansett, Rhode Island. The solicitation further provided, in section C.1: "The structure and foundation shall meet all NEC, BOCA and applicable Rhode Island codes in addition to all requirements within this document."

Mobile/Modular challenges Carter's ability to comply with section C.1. The protester states that the Rhode Island Code requires that the manufacturer be approved by the State of Rhode Island and that the Rhode Island label be attached to the building as certification of compliance. Mobile/Modular asserts that Roger Carter is not an approved manufacturer and will not be able to obtain Rhode Island approval in time to perform, given the solicitation requirement for delivery within 35 days.

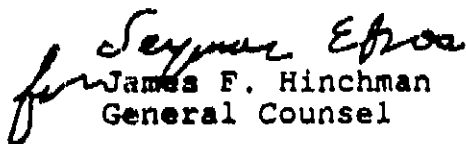
The agency responds that the solicitation only required that "applicable" Rhode Island Codes be met. The agency states that since the building is to be placed on federal property,

the Rhode Island Code requirements do not apply. The agency has submitted a letter from the Rhode Island Building Code Commission stating that building, structures and work performed on federal property are not subject to the State Building Code requirements.

A contractor's compliance with state requirements is a matter for resolution by the contractor and the state authorities, not federal officials, since federal procurement officials are generally not in a position to know what is required by state and local licensing requirements. Interstate Industrial Inc., B-241974, Nov. 13, 1990, 90-2 CPD ¶ 393. To the extent that the performance of the contract may be affected by the contractor's failure to comply with any Code requirements, this is a matter of contract administration which our Office does not review. 4 C.F.R. § 21.3(m)(1) (1992); Id.

Further, the protester's suggestion that merely including the requirement for meeting "applicable Rhode Island codes" makes the Code applicable is contrary to the plain language of section C.1. We think a more reasonable interpretation of C.1. is that if the Code is otherwise applicable to the project, then the contractor shall comply with Code requirements. Although the solicitation is not explicit, it apparently envisioned the location of the structure on federal land. The agency confirmed that it intended the structure to be placed on federal land. According to the State's authorities, such work is not subject to Rhode Island code requirements. The awardee's ability to meet Rhode Island code requirements is therefore not relevant.¹

The protest is denied.


James F. Hinchman
General Counsel

¹The agency notes that since award of the contract, government personnel at the site have "raised the possibility" of placing part of the structure on state land. This alternative is purely speculative and consequently we do not address the issue.