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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-213327

DATE: December 16, 1983

MATTER OF: Flexfab, Inc.

DIGEST:

Solicitation is not ambiguous where one of the alleged inconsistent provisions merely modifies the application of general provision. Therefore, IFB for Qualified Product List (QPL) item containing statement that it was labor surplus set-aside, but clause indicates differential will not be applied to QPL items, is not objectionable.

Flexfab, Inc. (Flexfab), protests the award of a contract to the H.K. Porter Company (Porter) under Defense Logistics Agency (DLA) invitation for bids (IFB) No. DLA700-83-B-1304. Flexfab alleges that the contracting officer failed to apply the IFB's evaluation criteria.

The protest is denied.

The IFB was for air duct hoses, an item contained on a Qualified Product List (QPL). The IFB cover sheet stated that for evaluation purposes, a differential would be added to the total bid of any bidder who did not indicate that it would perform the contract in a labor surplus area (LSA). Flexfab indicated that it would perform the contract in an LSA and Porter indicated that it would not perform in an LSA. DLA did not add a differential to the low bid of Porter because provision L29a(e)(iii) of the IFB provided that "differential" for a total LSA concern would not apply to a solicitation for an item on a QPL. If an evaluation factor was added to Porter's bid, Flexfab would become the low bidder.

Flexfab's protest to DLA that, in accordance with the IFB's cover sheet, a differential should be applied to Porter's bid was denied on the basis of provision L29a(e)(iii). Flexfab now protests to this Office that the LSA evaluation provisions are ambiguous and that the contracting officer improperly found that provision L29a(e)(iii) superseded the provision which required an evaluation factor be added to the bid of a non-LSA bidder.

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Regarding provision L29a(e)(iii), Flexfab argues that while it stated that "percent would not apply to a solicitation for an item on a QPL it did not state that no percentage factor would be applied." Flexfab notes that provision L29aa states that an evaluation factor of 5 percent, 2.2 percent or some other evaluation factor may be applied. Flexfab reasons that since DLA knew that the required item was on a QPL, it would not have included the provision requiring the application of a differential to a non-LSA bidder unless DLA intended to apply some differential to such bids. Flexfab concludes that provision L29a(e)(iii) should be construed to mean that some differential, different than the differential which would apply to a procurement for a non-QPL item, would apply to the present procurement. We disagree with this analysis.

A solicitation may be confusing, but not ambiguous. JVAN, Inc., B-202357, August 28, 1981, 81-2 CPD 184. In this respect, the mere allegation that an IFB is ambiguous does not make it so. Rather, we will only find that an IFB is ambiguous if the IFB is subject to more than one reasonable interpretation. Id. We find that the present IFB is not subject to more than one reasonable interpretation.

A solicitation must be read as a whole and, if possible, effect must be given to each clause. Tymshare, Inc., B-193703, September 4, 1979, 79-2 CPD 172. Applying this rule, we find that the cover sheet of the IFB stated the general rule that, under an LSA procurement, an evaluation factor would be applied to a bid which did not offer to perform in an LSA and that provision L29a(e)(iii) stated an exception which applies when the solicitation requests an item which is contained on a QPL. Thus, the only reasonable interpretation of these two provisions is that, in an LSA procurement, a differential will be applied unless the item requested is on a QPL.

Further, Flexfab's suggestion that the solicitation evidenced DLA's intent to apply a differential to this QPL procurement different from the differential which would be applied if the item sought was not on a QPL is without merit.

Provision L29aa, cited by Flexfab, states:

"L29aa- EVALUATION OF NON LSA OFFERS IN ACCORDANCE WITH APPLICABLE LEGISLATION (DLA OCT 82)"

"The amount of price differential that may be used in evaluating offers under the clause of this solicitation, entitled 'Notice of Total

Labor Surplus Area Concern Set-Aside with Price Differential' is subject to legislation in effect at the time of award. Offerors are cautioned that the most likely amounts that may be used are five percent or 2.2 percent, but that the Act appropriating funds to the Department of Defense for Fiscal Year 1983 may authorize some other differential."

The other clause, L29a(e)(iii), regarding LSA's had an asterisk sign inserted in the blank reserved for the percentage differential and referred the reader to L29aa. The plain meaning of the clause is that DLA did not know the amount of the differential until the date of award because it would be determined from pending legislation, not that DLA would use a different factor for QPL items.

The protest is denied.

for 
Comptroller General
of the United States