Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: HLC Industries

File: B-265700

Date: November 17, 1995

Ruth E. Ganister, Esq., Rosenthal and Ganister, for the protester.
Jonathan C. Cramer, Esq., and Donovan Cunningham, Esq., Department of Justice, for the agency.
Sylvia Schatz, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest against cancellation of invitation for bids after bid opening is denied where agency had specific evidence that resolicitation would yield lower prices; the reasonable expectation of cost savings furnished a compelling basis for cancellation.

DECISION

HLC Industries protests the cancellation of invitation for bids (IFB) No. 1PI-B-1453-95, issued by the Department of Justice, Federal Prison Industries (known as UNICOR), for camouflage patterned cloth. HLC contends that the agency lacked a compelling reason for cancellation after bid opening.

We deny the protest.

The IFB contemplated the award of a firm, fixed-price requirements contract for a base year and 4 option years for camouflage fabric, which was to be used to manufacture battle dress uniforms for the Defense Personnel Support Center (DPSC). The IFB schedule included four line items, one for each of four different types of cloth; the solicitation required bidders to submit unit and extended prices based on the IFB estimates of 4,350,000 yards of cloth for each line item. The IFB set forth an overall minimum quantity of 4,650,000 yards of fabric over the 5-year contract, but did not establish guaranteed minimum quantities for any one type of cloth. The IFB included Federal Acquisition Regulation (FAR) standard clause § 52.207-4, entitled "Economic Purchase Quantity," which requested opinions from firms with respect to whether different quantities of the items would be more economically advantageous to the government. This clause afforded firms the opportunity to recommend an "economic purchase quantity," defined as a "quantity at which a significant price break occurs"; the clause reserved to the government "the right to amend or cancel the solicitation and resolicit with respect to any individual item in the event quotations received and the Government's requirements indicate that different quantities should be acquired."

HLC submitted the low bid of $84,216,000, while Delta Mills submitted the next-low bid of $90,480,000. Delta Mills also submitted an alternate bid, pursuant to FAR § 52.207-4, offering UNICOR a lower price if the contemplated contract were changed from a 5-year contract to a 2-year contract and a minimum order for each of the fabrics were established. UNICOR subsequently decided to cancel the IFB and resolicit its requirements on the basis that: (1) DPSC had notified UNICOR that it no longer required the product manufactured from one of the four types of cloth; (2) UNICOR had discovered that a second type of cloth was available under an option year of a current UNICOR contract with Delta Mills at a price that was approximately 30 percent less than the low price submitted by HLC under the instant solicitation; and (3) restructuring the solicitation to reduce the 5-year contract period to a base and 1 option year and to establish a minimum quantity requirement for the remaining two types of fabric would result in considerable cost savings to the government.

HLC argues that UNICOR lacked a compelling reason for cancelling the IFB after bid opening since, in its view, the government was assured of satisfying its needs at the lowest overall price by accepting its bid as submitted. According to the protester, since the IFB contemplated the award of a requirements contract which did not require the agency to order a minimum quantity of any particular type of cloth and only required an overall minimum order of 4,650,000 yards of cloth over the 5-year term of the contract, the agency could have met its needs by simply ordering whichever of the four types of cloth covered by the solicitation it required.

The preservation of the integrity of the competitive bidding system requires that the determination to cancel an IFB after bids have been exposed at bid opening be supported by a compelling reason. FAR § 14.404-1(a)(1). Determining whether a compelling reason exists involves the exercise of the contracting agency's judgment; we review such a determination only to ensure that it is reasonable. <u>GS Elektro-Schewe GmbH</u>, B-259103.2, Apr. 13, 1995, 95-1 CPD ¶ 196; <u>Control Concepts, Inc.</u>, B-233354.3, Apr. 6, 1989, 89-1 CPD ¶ 358. We have previously recognized that a compelling basis for cancellation exists where the agency has specific evidence that resolicitation would yield lower prices. <u>Color Dynamics, Inc.--Recon.</u>, B-236033.3, Dec. 22, 1989, 89-2 CPD ¶ 583; <u>see</u> <u>National Linen Serv.</u>, B-257112; B-257312, Aug. 31, 1994, 94-2 CPD ¶ 94.

We find UNICOR's determination to cancel the IFB to be unobjectionable. The agency determined that because bidders under the original IFB needed to maintain a large inventory of different types of fabric with no certainty as to how much or when within the 5-year contract period any particular fabric would be required, the bids it received were higher than might otherwise be expected if the risks imposed on bidders were less. In particular, the agency anticipated that a substantial reduction in bid prices would result under a revised solicitation requiring the agency to order within a 2-year contract period a minimum quantity of 850,000 yards of each of the two types of cloth it had determined were in fact required, since offerors would thereby be exposed to less uncertainty as they could keep on hand a smaller inventory of only two kinds of cloth that the agency would definitely order within a shorter period of time. In support of its position, the agency points to Delta Mills' alternate bid, which offered unit prices of $5.30 and $5.40 per yard for the two types of cloth required by the agency based on a minimum required order of 1,000,000 yards per year for a 2-year period; Delta Mills' alternate bid unit prices were significantly lower than HLC's bid of $5.99 per yard for these types of cloth.

HLC notes that Delta Mills' lower prices were contingent upon UNICOR's agreement to place minimum orders in each of the 2 contract years. The record, however, furnishes no basis for concluding that the minimum quantities contemplated by UNICOR would not be consistent with the agency's minimum needs. Further, although the contemplated contract may impose different burdens on UNICOR, we think the agency's reasonable determination that it can obtain better prices by expressing its needs on a year-to-year basis furnished a compelling basis to cancel the IFB and resolicit its requirements.

The protest is denied.

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