



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Freedom Graphic Systems, Inc.

File: B-277305

Date: September 22, 1997

Frederic G. Antoun, Jr., Esq., for the protester.

Thomas Kelly, Esq., Government Printing Office, for the agency.

Katherine I. Riback, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Allegation that termination of contract and resolicitation is improper because agency should have modified protester's contract and considered protester's claim for a substantial concomitant price increase does not provide a valid basis for protest.

DECISION

Freedom Graphic Systems, Inc. protests the termination for convenience of a contract issued to it by the Government Printing Office (GPO) under Jacket 425-791, and the resolicitation of a requirement for the production of four versions of a variably imaged self-mailer for the Social Security Administration. Freedom requests that the agency withdraw the termination for convenience, cancel the subsequent resolicitation and award, and reinstate Freedom's original contract with a change order for certain additional required work.

We dismiss the protest.

The agency received four bids at the original bid opening on May 19, 1997. Award was made to Freedom on the basis of its low bid of \$852,862.50. At a post-award conference, Freedom's representative was advised by the agency that the specifications were incorrect because the product needed by the user required the computerized imaging of both sides of the form, rather than the one side specified in the IFB. Freedom subsequently stated that it intended to charge for this modification to the specifications and, on June 2, Freedom quoted an additional price of approximately \$151,052.80, with no supporting justification. To date, Freedom has submitted only an internal price list, which the agency concluded was not sufficient to justify Freedom's additional charge.

Because Freedom did not adequately justify its proposed \$151,052.80 charge to meet the revised specifications, the contracting officer decided not to modify the contract. Instead, the contracting officer decided to terminate for convenience and resolicit bids using the new specifications. The agency's Contract Review Board unanimously concurred with the contracting officer's decision. The day after the termination for convenience, the customer agency, the Social Security Administration, notified the GPO of 10 other changes to the specifications in addition to the change involving two-sided imaging. GPO subsequently issued a new solicitation with specifications reflecting the two-sided imaging requirement as well as the other changes.

On June 9, Freedom filed an agency-level protest against the termination for convenience and the resolicitation, which was denied on June 17. On that same date, the four bids that were received in response to the resolicitation were opened. Webcraft Technology, Inc. was awarded the contract on the basis of its low bid of \$966,737.57. Freedom's bid of \$974,557.50 was second low. This protest to GAO followed.

An agency's decision to terminate a contract for the convenience of the government is usually a matter of contract administration that is not subject to review by our Office under our bid protest procedures, unless the decision results from the agency's finding that the initial contract award was improper, in which case we will review the protest to examine the propriety of the award procedures that underlie the termination action. Special Waste, Inc., 67 Comp. Gen. 429, 431 (1988), 88-1 CPD ¶ 520 at 3. Termination of a contract and resolicitation is proper when, subsequent to award, the contracting agency discovers that the solicitation did not properly describe the government's needs, id., or that the solicitation contains inadequate specifications which misled competitors and deprived the government of the full benefits of competition. See Flow Tech., Inc., 67 Comp. Gen. 161, 162 (1987), 87-2 CPD ¶ 633 at 3.

Here, the crux of the protester's argument is that our Office should review a contract administration matter and require the agency to issue a contract change order for which Freedom seeks a substantial price adjustment, rather than terminate Freedom's contract. While the protester argues that our Office should consider the matter because it involves a termination based on a material solicitation defect, the protester's arguments are contradicted by its actions. That is, the protester asserts that GPO's cancellation reflects an improper determination that the specifications were materially defective when, in fact, the specification defects were minimal and inconsequential. However, the protester's position that the changed requirements warranted a price adjustment in excess of \$150,000 under a contract award of \$852,862.50, as well as its price increase of more than \$120,000 under the successor IFB establish that the protester did not view the specification defects as negligible. See Federal Acquisition Regulation § 14.405.

Where an agency makes award to a firm based on a solicitation which does not accurately reflect the agency's minimum needs, the award should be terminated and the procurement reopened to allow competing firms an opportunity to respond to the agency's revised requirements. Budney Indus., B-252361, June 10, 1993, 93-1 CPD ¶ 450 at 3-4. This is the appropriate action even where prices have been revealed, since award under a solicitation that does not accurately reflect an agency's needs is prejudicial to the interests of the government and to the integrity of the procurement system. Id.

Here, while the crux of Freedom's protest pertains to a contract administration issue which is not for review by our Office, Freedom's own arguments and actions establish that it does not have a valid basis to protest that the specification defects underlying the termination and resolicitation did not provide a proper basis for the agency to take that action.

The protest is dismissed.

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