

95313

DECISION



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

50576

FILE: B-182249

DATE: February 25, 1975

MATTER OF: Westinghouse Electric Corporation

DIGEST:

1. Where contracting officer canceled initial solicitation partly upon determination that all otherwise acceptable bids were considerably higher than Government estimate, fact that Government estimate used for that determination was within range of reasonably to be anticipated prices as demonstrated by majority of bids received upon resolicitation, and was in line with low but nonresponsive bid received under initial solicitation, substantiates propriety of cancellation.

2. While determination to cancel solicitation and resolicit using extended delivery dates should not in general be made where initial delivery dates will satisfy Government requirement, cancellation and resolicitation on basis of extended delivery schedule was not improper where contracting officer found that earlier delivery dates had unnecessarily restricted competition.

Westinghouse Electric Corporation (Westinghouse) protests the action of the Bonneville Power Administration (BPA) in canceling its initial solicitation for current transformers and resoliciting that requirement subject to an extended delivery schedule.

The original invitation, No. 5014, issued July 15, 1974, solicited prices for item #1, consisting of six current transformers, and item #2, consisting of three transformers. Amendment #1 to the initial solicitation gave bidders the option of making their bid prices subject to price adjustment, while Amendment #2, issued at the request of two of the three original bidders, extended the time for delivery from May 1, 1975, for both items to September 2, 1975, for item #1 and August 1, 1975, for item #2. In connection with issuance of the second amendment, BPA reviewed the scheduling of construction for which the transformers were needed and concluded that the delivery dates for items #1 and #2 could be moved to September and August 1975, respectively, without adversely impacting its construction projects.

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Three bids were received in response to the initial solicitation. Brown Boveri, a foreign concern and the low bidder at \$16,500 per unit, failed to acknowledge receipt of Amendment #2 and, having bid on the basis of a delivery schedule (14 months after receipt of order) more extended than that solicited, was found to be nonresponsive. The protester's bid, in connection with which it has alleged mistake, was \$20,830 per unit, while General Electric Company (GE) bid \$25,000 per unit--more than twice the Government's original estimate of \$12,000 per unit.

Thereupon, BPA reviewed its original estimate and, having found it unrealistically low, revised its estimate to \$16,425, based on a unit price of \$14,300 paid by BPA in December 1972 for similar equipment, plus a percentage increase for inflation. The revised estimate nonetheless remained 27 percent below Westinghouse's unit bid of \$20,830 and 52 percent below GE's bid of \$25,000 per unit.

The basis for BPA's determination to cancel the initial solicitation is explained in the contracting officer's memorandum. Therein the contracting officer states his conclusion that Brown Boveri's low bid was nonresponsive, that the GE bid was unreasonably high and that Westinghouse's bid, which was also substantially in excess of the Government's revised estimate, was subject to withdrawal based on its allegation of mistake. The mistake concerned Westinghouse's failure to include a marked copy of Amendment #1 indicating that it elected to bid on the basis of price escalation.

The contracting officer further found that an extension in delivery dates could be expected to increase competition and result in lower bids. His determination includes the following statement:

"We have also reviewed the delivery requirements for these units. We find that delivery of Item 1 units for Maple Valley of six units is not required until Spring of 1976. Delivery of the 3 units for Monroe under Item 2 is required no later than October of 1975. This would extend the delivery dates in the solicitation by six and two months respectively.

"In summary we are faced with a situation where we have one nonresponsive bid, one bid mistake where correction would be questionable and a third bid with an unreasonable price. In addition, our revised delivery requirements could be expected to result in substantially lower prices to the Government. Therefore, I hereby determine that cancellation of the solicitation and readvertisement on a competitive basis is in the best interests of the

**Government within the meaning of Section 1-2.404-1
of the Federal Procurement Regulations."**

The requirement for transformers was resolicited under Solicitation No. 5112 using the extended delivery dates of April 1, 1976, and October 1, 1975, for items #1 and #2, respectively. In addition, the resolicitation permitted award by item or as a whole. The original solicitation had specified a single award for both items. The resolicitation on October 18, 1974, attracted a total of three additional bidders. Of the six bids submitted for item #1, four offered evaluated prices (including Buy-American adjustments where applicable) ranging from approximately \$17,000 to \$19,000 per unit. Westinghouse raised its price, bidding \$23,245 per unit, while GE again submitted its bid at \$25,000 per unit. As to the three units comprising item #2, three of the five bids received ranged from approximately \$17,540 to \$20,000, while the Westinghouse and GE bids were submitted at \$23,145 and \$25,000 per unit respectively. On October 25, 1974, a determination was made by the contracting officer to proceed with award of item #2 (3 units), in accordance with FPR 1-2.407-8(b)(ii), on the basis that further delay in the award of that item, with the resulting delay in delivery, could not be tolerated. That determination subsequently was approved by the agency. Since delivery of item #1 (6 units) was not deemed as critical, award of that item has not been made.

Westinghouse maintains that it is entitled to award under the initial solicitation and that resolicitation of the requirement was improper. Specifically, Westinghouse states that since all six bids received for item #1 and all five bids received for item #2, when considered on an evaluated basis, were above the Government's revised estimate of \$16,425 per unit, BPA improperly rejected its bid under the original solicitation as unreasonably high. In addition, protester maintains that the extension in the dates for delivery under the contract has little effect on performance and as such provided an insufficient basis for cancellation and resolicitation.

With respect to the revision in the delivery schedule under the resolicitation, protester points out that while the delivery dates were extended six months and two months respectively for items #1 and #2, the actual change in performance time was not nearly so great, given extension of the date for start of performance from September 6, 1974, to October 1, 1974. The protester states:

"The basis of resolicitation was an extension of delivery times. The contracting officer's statement says the low Brown-Boveri bid was nonresponsive. It is a pertinent unstated fact that it was so for failure to meet the delivery date. It should be noted that the net increase in performance time for item 2 between the first and second solicitations is only 12 days. Under No. 5014 it was 330 days from September 6, 1974, to August 1, 1975, (Amend. 2). Under 5112, it is 342 days from October 25, 1974, to October 1, 1975. (The only real extension was on item 1 of approximately 160 days, but this had the longer performance time originally.) If these extensions were necessary for bidders to respond, they should have been obtained prior to the first bidding. BPA certainly knew, or should have, that lead times for a major component (high voltage porcelain) was nearly as long, or as long, as the original delivery time for the complete product. Yet, it determined originally to go ahead to meet its service requirements. Those requirements were not changed. All BPA did was adjust the delivery requirement without any significant change of performance time for item 2. In so doing, it merely eroded the time available for timely installation to get the equipment in service. The only reason for the delivery change was BPA's view of the original bid results."

With respect to the fact that the Government's revised estimate was less than the resolicited bids (as evaluated), we do not believe that this, in itself, demonstrates an abuse of discretion or unreasonableness on the part of the contracting officer in cancelling the original solicitation. While it does appear that the Government's original estimate of \$12,000 per unit may have been unrealistic, it does not appear that the revised estimate of \$16,425 was outside the range of what could reasonably be anticipated in terms of price. We note that the lowest of the unadjusted bids received under the resolicitation was less than the Government's estimate and that bid, when evaluated, was less than \$1,000 per unit in excess of the Government estimate, as compared to the protester's bid under the original solicitation which was more than \$4,000 above the revised estimate. Moreover, we think that the reasonableness of the Government's revised estimate is substantiated by its proximity to the low but nonresponsive bid of Brown Boveri received under the initial solicitation. In this connection, we have recognized that an administrative determination

that the lowest acceptable bid is excessive in amount is properly to be made in light of all facts, including those which may have been disclosed by the bidding. 36 Comp. Gen. 364 (1956). Absent specific evidence that the Government's revised estimate was arbitrarily deduced, we are unable to find any abuse of discretion by the contracting officer in relying, in part, upon that estimate as a basis for cancellation of the initial solicitation.

In fact, the record shows that because the contracting officer felt that the unreasonableness in prices received under the initial solicitation was partially attributable to the delivery schedule, he relied more heavily upon a revision in the delivery schedule than on the unreasonableness of the bids received as the basis for the cancellation. While we recognize that the actual performance time for the three units comprising item #2 was extended by only a few weeks, we are informed that the actual delivery time was understood by the contracting officer to have less impact on competition than the availability of production time for all nine units (items #1 and #2). In this regard, the contracting officer explains that his expectation of lower prices from the resolicitation was based on the fact that the resolicitation would be within a different time frame, permitting companies which had previously been unable to compete to readjust their production schedules to bid on the resolicited requirement. Although we generally have held that cancellation on the basis of a change in specifications or delivery schedule should be limited to instances in which the original specification or delivery requirement would not serve the Government's actual needs, see 49 Comp. Gen. 584 (1970), in this case the contracting officer's determination appears in fact to have been made on a reasonable basis. Having received two bids under the initial solicitation which substantially exceeded the Government's revised estimate, and only one bid that was considered reasonable in amount, which however was nonresponsive for its failure to meet the delivery requirement, the contracting officer reviewed the BPA's delivery time constraints to determine whether the delivery schedule had unduly restricted competition. He concluded that the procurement should be resolicited under a more relaxed delivery schedule in order to increase competition.

Under the circumstances, we are unable to find that the contracting officer acted improperly in canceling the original solicitation and in resoliciting the requirement under an extended delivery schedule. Thus, Westinghouse's protest is denied.


Deputy Comptroller General
of the United States