

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

50844

FILE: B-183342

DATE: June 30, 1975

MATTER OF: Federal Contracting Corporation

097132
497132**DIGEST:**

1. Post-bid opening protest in which bidder alleges it was misled by inadequate specification was timely filed because it concerned an impropriety in the solicitation which was not apparent on its face. Even if protester should have known of defect in IFB prior to bid opening, deficiencies in procurement warrant consideration of the protest on its merits.
2. IFB for installation of garbage disposals in military family housing units was defective because it did not state the total quantity of disposals to be installed nor did the project site plan attached to IFB identify housing units as duplexes and fourplexes. However, solicitation should not be canceled because protester, the third low bidder, was not prejudiced by deficiency since knowledge of actual requirements could only have increased his price and adequate competition and reasonable prices were obtained from other eight bidders. Procuring agency is advised that future procurements should include precise statement of quantity of work to be performed where, as here, that information is easily ascertainable.

Invitation for Bids (IFB) DAKF19-75-B-0016 was issued by Fort Riley, Kansas, for the installation of garbage disposals and ceiling lights in base housing.

Bids were opened on February 26, 1975. By telegram of March 3, 1975, Federal Contracting Corporation (Federal) protested to this Office, alleging that it could not be determined from the specifications and drawings how many garbage disposals were to be installed in Area No. 2 of the base. Federal argued that the solicitation reflected only single family dwellings when in fact a number of the dwellings requiring disposals were multiple family units requiring the installation of two or more disposals in each building. Federal maintains that the solicitation was therefore defective and should be canceled and the requirement should be resolicited. Award is being held in abeyance pending a decision from this Office.

The solicitation described the work to be performed as follows:

"a. Work to be Accomplished: The work consists of furnishing all plant, labor, materials and equipment, and performing all work in strict accordance with the specifications and drawings forming parts thereof for installation of garbage disposals and ceiling lights in Area #11 /Project No. RIL-FH-I(18)-15-74/ and installation of garbage disposals in Area #2 /Project No. RIL-FH-I(18)-18-74/.

"b. Location: The sites of the proposed work are the Main Post and Custer Hill areas at Fort Riley, Kansas."

Accompanying the specifications were two large drawings. The first, a "site plan" of portions of Fort Riley, clearly delineated Areas Nos. 2 and 11 and those buildings within each area in which the equipment was to be installed. In Area No. 2, forty buildings were designated as requiring garbage disposals. The second drawing was a set of floor plans relating solely to Area No. 11 indicating where in each unit the ceiling lights and garbage disposals were to be installed. It is clear from notations upon the floor plans that the units in Area No. 11 are duplexes.

The bid Schedule read as follows:

"1. Project No. RIL-FH-I(18)-15-74 /Area No. 11/. For the total work as indicated on the plans and subject to the applicable portions of the specifications for all work in quarters No. 5107-1&2, 5112-1&2 thru 5122-1&2, 5125-1&2, 5127-1&2, 5131-1&2 thru 5147-1&2, 5151-1&2, 5153-1&2, 5155-1&2, 5157-1&2.

Lump Sum Price: \$ _____

"2. Project No. RIL-FH-I(18)-18-74 /Area No. 2/. For the total work as indicated on the plans and subject to the applicable portions of the specifications for all work in quarters No. 102 thru 106, 95 thru 99, 162, 170, 171, 172, 221 thru 229, 301 thru 310, 330 thru 336.

Lump Sum Price: \$ _____

"Note: All items in the Bid Schedule shall be furnished and installed in accordance with project drawings and specifications. General statements in the Bid Schedule in no way limit the contractor's responsibility."

Federal points out that the site plan for Area No. 2 indicates only that disposals were required for forty designated buildings in that area. The protest states that not until bid opening did it discover that the forty buildings were duplexes and fourplexes in which 91 disposals were to be installed.

The procuring agency contends that the protest was untimely filed under the bid protest procedures governing this protest, 4 Code of Federal Regulations (C.F.R.) § 20.2(a) (1974 ed.), which provide that:

"Protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening * * * shall be filed prior to bid opening * * *."

However, the protester's position, with which we agree, is that the defect in the solicitation was not apparent on the face of the bid. Even if the lack of more definite information in the IFB is considered an impropriety which should have been apparent prior to bid opening, we believe the deficiencies in this procurement warrant consideration of the protest on its merits.

It is provided at 10 U.S.C. § 2305(a) (1970), which pertains to procurement by formal advertising, that "invitations for bids shall permit such full and free competition as is consistent with the procurement of types of property and services necessary to meet the requirements of the agency concerned." The purpose of statutes requiring the award of contracts to the lowest responsible bidder after advertising is to give all bidders equal right to compete for Government contracts and to secure for the Government the benefits which flow from free and unrestricted competition. See United States v. Brookridge Farm, 111 F. 2d 461 (10th Cir. 1940). To permit bidders to compete on equal terms, the invitation must be sufficiently definite to permit the preparation and evaluation of bids on a common basis which should be as clear, precise and exact as possible. It is axiomatic that bidders cannot compete on an equal basis as required by law unless they know of and compute their bids in accordance with the objective factors comprising the bases upon which their bids will be evaluated. 36 Comp. Gen. 380 (1956).

The site plan accompanying the IFB shows only that garbage disposals were to be installed in 40 separate buildings of officers family housing in Area No. 2. Those buildings are depicted as being generally larger than the duplexes within Area No. 11, which provides some indication that each building is a multiple dwelling unit. However, nowhere in the solicitation is the Area No. 2 housing described as duplexes and fourplexes, and those quarters were numbered individually in the IFB Schedule, in contrast to the Area No. 11 duplexes whose numbers were followed by the suffix "1 & 2". The instant protest would have been obviated had the solicitation simply advised bidders that 91 garbage disposal units were to be installed within Area No. 2.

The agency maintains that the protester could have ascertained the number of disposals to be installed by visiting the site prior to submission of its bid, as suggested by the clause entitled "Conditions Affecting the Work" contained in the IFB's Instructions to Bidders. However, we think there is merit to the protester's position that bidders should not be required to visit the site prior to bidding on a procurement of this nature in order to obtain basic information such as the number of units to be installed.

With regard to the protester's contention that the solicitation should be canceled and the requirement readvertised, Armed Services Procurement Regulation (ASPR) § 2-404.1 (1974) provides generally that:

"(a) The preservation of the integrity of the competitive bid system dictates that after bids have been opened, award must be made to that responsible bidder who submitted the lowest responsive bid, unless there is a compelling reason to reject all bids and cancel the invitation. * * *

"(b) * * * Invitations for bids may be canceled after opening but prior to award where such action is consistent with (a) above and the contracting officer determines in writing that -

"(i) inadequate or ambiguous specifications were cited in the invitation. * * *" (Emphasis added.)

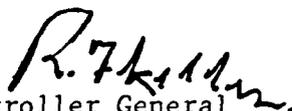
As stated in Massman Constr. Co. v. United States, 102 Ct. Cl. 699, 719 (1945):

"To have a set of bids discarded after they are opened and each bidder has learned his competitor's price is a serious matter, and it should not be permitted except for cogent reasons."

The mere utilization in the IFB of inadequate, ambiguous or otherwise deficient specifications is not, absent a showing of prejudice, a "compelling reason" to cancel an IFB and readvertise. The rejection of all bids after they have been opened tends to discourage competition because it results in making all bids public without award, which is contrary to the interests of the low bidder, and because rejection of all bids means that bidders have extended manpower and money in preparation of their bids without the possibility of acceptance. 53 Comp. Gen. 586 (1974). Moreover, as a general proposition, it is our view that cancellation after bids are opened is inappropriate when award under a solicitation would serve the actual needs of the Government. 54 Comp. Gen. 145 (1974); 49 Comp. Gen. 211 (1969); 48 Comp. Gen. 731 (1969).

The abstract of bids reveals that nine bids were received and that Federal was the third low bidder. Federal states that it bid upon the basis of installing 40 garbage disposals rather than 91. Therefore, it appears that had Federal been aware of the actual requirements for Area No. 2, its bid would have been increased. As a result, there is no evidence that Federal was materially prejudiced by the defect in the solicitation. Moreover, the record reveals that 7 of the 8 other bidders, including the low bidder, did inspect the site. Consequently, since the solicitation resulted in the Government achieving adequate competition and reasonable prices for the requirement, there exists no "compelling or cogent reason" for the invitation to be canceled. See S. Abrahams & Co., B-180064, May 10, 1974.

Accordingly, the protest must be denied. However, we are recommending to the Secretary of the Army that in future procurements, solicitations contain precise statements of the quantity of work to be performed where, as here, that information is easily ascertainable.


Deputy Comptroller General
of the United States