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DECISION



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

*L. Kozlakowski
Proc I*

FILE: B-187688

DATE: February 17, 1977

MATTER OF: Empire Painting Company, Inc.

DIGEST:

Ambiguities in IFB governing method of pricing and areas to be coated with textured paint justified cancellation of IFB and readvertisement.

Empire Painting Company, Inc. (Empire), protests the cancellation of invitation for bids (IFB) F65501-76-0-9130 issued by Elmendorf Air Force Base for interior painting work at the base. Three bids were opened on September 27, 1976. The solicitation was canceled on October 6, 1976, because of ambiguous specifications and other circumstances discussed infra.

Empire contends that cancellation of the original solicitation and resolicitation of basically the same requirements would be prejudicial to the integrity of the competitive bidding system since bid prices have been revealed. Specifically, it asserts that cancellation of the original solicitation would be contrary to paragraph 2-404.1 of the Armed Services Procurement Regulation (ASPR) (1976 ed.) as the specification ambiguity does not constitute a compelling reason to reject all bids.

In support of the Air Force's assertion that cancellation was proper because of ambiguous specifications, it is stated:

"* * * By modification M03, the Government, intending to add a new requirement for texture coating, amended the solicitation as follows: in the Bid Schedules, Item 1 was relabeled 'Item 1A,' the texture coating labeled 'Item 1B' with total square footage indicated and unit prices and total amounts requested therefor; in the Technical Provisions a new Section 2-10-1, 'Textured Paint,' was added which provided for (i) textured coating, and (ii) a second coat of latex finish, and Section 2-13, 'Painting Schedule,' was revised whereby the texture coating was indicated to be a 'spot prime.' However, the 'Tables of Areas to be Painted' in the Technical Provisions, which further defined the Bid Schedule item requirements in square footage by room, was not revised to include any reference to texture coating."

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The unit price for item 1B (texture painting) was not to include a price for item 1A (surface preparation, spot priming and latex finish). The omission of the "Tables of Areas to be Painted" to include item 1B was not discovered until after cancellation. Further, after cancellation the Government reduced its overall requirements by approximately 23 percent.

Paragraph 10(b) of standard form 22, included in the IFB, reserves to the Government the right to reject any or all offers. The statutory authority for such a provision is 10 U.S.C. § 2305(c) (1970) permitting the rejection of all bids when such action is determined to be in the public interest. In addition, ASPR § 2-404.1(b) (1976 ed.) provides that an invitation may be canceled after bid opening but before award where "inadequate or ambiguous specifications were cited in the invitation" or where, for other reasons, it is "clearly in the best interest of the Government."

The fact that the terms of an IFB were deficient in some way does not necessarily justify cancellation after bids have been opened and bidders' prices exposed. Jay Manufacturing Co., 54 Comp. Gen. 237 (1974), 74-2 CPD 183. Our Office has objected to cancellation and resolicitation where award under a solicitation would serve the actual needs of the Government and work no prejudice on the rights of others. GAF Corporation, 53 Comp. Gen. 535 (1974), 74-1 CPD 66.

However, contracting officers are clothed with broad powers of discretion in deciding whether an invitation should be canceled, and our Office will not interfere with such a decision in absence of clear proof of abuse of such discretion. 50 Comp. Gen. 50, 52 (1970). Additionally, we believe that once the propriety of a procurement action has been questioned through the filing of a protest with our Office, we are obligated to consider all the relevant circumstances including those which may not have been considered initially by the contracting officer. Juanita H. Burns and George M. Sobley, 55 Comp. Gen. 567, 588 (1975), 75-2 CPD 400; Hercules Demolition Corporation, B-186411, August 18, 1976, 76-2 CPD 173.

With respect to the texture coating, it was not explicitly stated whether item 1B was not to include a price for item 1A (which was the intended meaning of the format). Further, as pointed out by the Air Force—

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"* * * the basic specification for Item 1B, Technical Provision Section 2-10.1, 'Textured Paint,' defined the requirement as a first coat of textured paint and a second coat of latex finish, thereby suggesting that the pricing and total square footage of Item 1B was to include some amount for latex finish. The modification MO3 revision to Technical Provision Section 2-13, 'Paint Schedule' added further confusion by categorizing the texture coating as 'spot prime,' which in the Bid Schedules is identified as work under Item 1A. The ambiguous definition of the desired texture coating was not susceptible to clarification by recourse to other provisions of the solicitation. The 'Tables of Areas to be Painted,' which could have clarified the intended Item 1B requirement because it provided a descriptive breakdown of the Bid Schedule Items in terms of coating (e.g., latex) per square foot by room, was not revised to reflect texture coating.
* * *"

It is these circumstances, we believe, which provide a cogent and compelling reason for the cancellation of the IFB and readvertisement of the work.

The record shows that the protester contacted the procurement activity prior to bid opening to obtain a clarification of the method of pricing items 1A and 1B. The other two bidders apparently misunderstood the Government's intent. Also, it would appear from the record that one of the other bidders indicated, prior to cancellation, that it was prepared to protest an award to Empire because of ambiguous specifications. Based on the bids submitted, it would be impossible to speculate what the intended bids would have been without the ambiguities. Further, it is doubtful that under the specifications the Government's requirements would be met. In reaching this conclusion, we do not reach the question of reduced painting requirements.

Accordingly, we find no basis to object to the agency's determination to cancel the IFB and resolicit bids under an invitation which provides accurate information to bidders reflecting the Air Force's minimum needs.

Empire's protest is therefore denied.


Acting Comptroller General
of the United States