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Richard Martin  
Proc. II

**DECISION**



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

**FILE: B-187604**

**DATE: April 8, 1977**

**MATTER OF: ABS Duplicators, Inc., et al.**

**DIGEST:**

Where IFB does not clearly state actual needs of agency thereby providing competitive advantage to bidders with knowledge of what agency will actually require from contractor, GAO recommends resolicitation of proposal and, if advantageous to Government, that new contract be awarded and that present contract be terminated.

Three protests have been submitted to this Office regarding an award to TS Info Systems (TS Info) under invitation for bids (IFB) No. 76-25 by the United States Department of Labor (Labor). The solicitation called for bids to furnish all equipment, material and labor for the operation of photocopy services for one year with an option to extend for an additional year. The specifications, in part, required:

"A. Complete photocopy station will consist of the following:

- "(1) Four stations with bond paper multiple reduction photocopiers with sorting capabilities and one operator.
- "(2) Three photocopy stations with bond paper same size photocopiers with sorting capabilities and one operator."

The bids were opened on September 16, 1976, and on September 23, 1976, a contract was awarded to TS Info which had been determined to be the lowest responsive and responsible bidder.

ABS Duplicators, Inc. (ABS) which was the second lowest bidder and had provided the services for the previous year

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asserts that the contracting officer knowingly ignored substantial evidence establishing a lack of integrity by TS Info.

A second protest was submitted by Kaufman DeDeil Printing, Inc. (Kaufman) after initially protesting directly to Labor about the mishandling of an amendment to its bid. Labor has acknowledged that Kaufman sent its bid amendment by certified mail five days prior to the bid opening, that the bid amendment was received at the office designated in the solicitation prior to award but that it was not brought to the attention of the contracting officer until after the contract award. The amendment was returned unopened to Kaufman which contends that the amendment proposed prices below those of the contractor and was fully responsive.

Finally, the Silver Spring Blueprinting Company (SSB) submitted an untimely protest to this Office. However, we believe the matter should be considered under the exception provided in our Bid Protest Procedures for considering untimely protests which raise issues significant to procurement practices and procedures. 4 C.F.R. 20.2(c) (1976).

The essence of SSB's protest is that the specifications of the IFB do not accurately represent the actual needs of the agency inasmuch as TS Info has not been required to perform in accordance with the specifications. Specifically, SSB states that Labor has not enforced the requirement that four stations be equipped with bond paper multiple reduction photocopiers because the contractor has been permitted to furnish less costly and less efficient equipment which performs the same function in a two-step rather than a one-step operation. The firm contends that such forbearance is unfair to those bidders who established prices on the assumption that adherence to the specified equipment would be strictly enforced.

Labor readily admits permitting use of the nonconforming equipment and states that, previous to this protest, it was not aware that there was a conflict between its intent and the exact language of the IFB. In fact, Labor states that ABS, the previous contractor, was also permitted to perform the reduction and copy operation with the less efficient equipment. The agency further states that because the end product provided by TS Info complies with its needs, it does not consider further action necessary.

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The information available to us indicates that the costs to be incurred by adherence to the specifications would be significantly greater than the costs of providing the nonconforming equipment now being used. The precise cost difference depends largely upon the volume of the copy reduction requirements with the difference being greater for low volumes than for high volumes.

It is clear, therefore, that the specifications overstated the Government's needs. The solicitation was therefore defective. Vista Scientific Corporation, B-185170, March 21, 1976, 76-1 CPD 212. What is not clear, however, is whether the defective specifications resulted in actual prejudice to either Kaufman, ABS, or SSB. In this connection, Kaufman contends that its mishandled and unopened bid amendment proposed prices below those of TS Info, ABS, and SSB even though it proposed to use the more expensive equipment specified in the IFB.

At this time, there is no acceptable way to determine with certainty whether the bidders would have submitted lower prices if the specifications had correctly reflected Labor's actual needs. Among the seven bidders, there was a maximum difference in the evaluated monthly station prices of \$760 and two of the bids were within \$350 of the contract prices. Therefore, we cannot say that lower prices would have been unlikely even if the actual needs had been clearly stated or that free and open competition was achieved. Moreover, we believe that an undue competitive advantage may have been given to those bidders possessing information not found within the confines of the solicitation. It is a fundamental requirement that advertised invitations must contain sufficient information for the intelligent preparation of bids so that the maximum competition possible is obtained. 49 Comp. Gen. 347 (1969).

The decision as to whether corrective action should be recommended depends on what, under all of the circumstances, would be in the best interest of the Government. In this regard, we note that Article V of the contract schedule reserves to the Government the right to cancel the contract at any time upon thirty days written notice. We therefore recommend that the requirement be resolicited on the basis of revised specifications clearly reflecting Labor's actual needs. If, after resolicitation, it is determined that it

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would be advantageous to the Government to accept one of the proposals received, then the contract with TS Info should be terminated for the convenience of the Government.

As this decision contains a recommendation for corrective action to be taken, it is being transmitted by letters of today to the congressional committees named in section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. § 1176 (1976), which requires the submission of written statements by the agency to the House and Senate Committees on Governmental Affairs concerning the action taken with respect to our recommendation.

*M. K. 174*  
Deputy Comptroller General  
of the United States