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DECISION

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

FILE: B-190405 DATE: March 7, 1978

MATTER OF: Halifax Engineering, Incorporated

DIGEST:

Award need not be made to fourth low and only bidder satisfying IFB requirement for submission of evidence of valid permits to perform security guard services since cancellation of solicitation is justified when permit specifications are ambiguous and in excess of Government's needs and may have had effect on prices quoted by bidders and other potential bidders may have refrained from bidding.

On August 3, 1977, the Department of the Army, MDW Directorate of Procurement, Cameron Station, Alexandria, Virginia, issued an invitation for bids (IFB) No. DAHC30-77-B-0064 for the performance of security guard services at Suitland Communication Towers and Suitland Annex in Maryland and at Suite "E," Tysons Corner, Virginia.

Six firms responded to the solicitation. The low bidder was permitted to withdraw due to a mistake in bid. Only one other bidder, Halifax Engineering, Incorporated (Halifax), the fourth lowest in line for award, complied with the provisions of the IFB which required certain documentation pertaining to permits necessary for the performance of the guard services. By letter of September 2, 1977, to the agency, Halifax protested award of a contract to any firm other than Halifax on the basis that it was the only bidder that had submitted the required documentation. Following the protest of Halifax, and because none of the other bidders had complied with the documentation requirement, the contracting officer determined that the IFB contained "ambiguities, inaccuracies and impossibilities of compliance."

Consequently, the IFB was canceled on September 30, 1977. On October 6, 1977, Halifax protested the cancellation to our Office, based upon the same grounds as its September 2 protest, and because its bid is now public knowledge, allegedly placing Halifax at a competitive disadvantage.

Generally, we will not question the authority of the contracting officer to reject all bids and readvertise when a compelling reason to do so exists. Spikard Enterprises, Inc., et al., 54 Comp. Gen. 145 (1974), 74-2 CPD 121; 52 Comp. Gen. 285 (1972); Engineering Research, Inc., B-187814, February 14, 1977, 77-1 CPD 106. Pursuant to Armed Services Procurement Regulation (ASPR) § 2-404.1 (1976 ed.), consistent with the requirement of the existence of a compelling reason to do so, a solicitation may be canceled where the contracting officer determines that inadequate or ambiguous specifications were used in the solicitation. Overstatement of the Government's minimum needs is also a proper ground for cancellation of an IFB. See Domar Industries, B-188516, B-188517, B-188656, August 26, 1977, 77-2 CPD 150. The record indicates that both of these bases to cancel exist here.

Section C-34 of the solicitation, a standard contract clause, provided that the contractor would be responsible for obtaining any licenses and permits and for complying with any applicable Federal, State, and municipal laws, codes, and regulations. This section merely places responsibility for obtaining any licenses which may be needed upon the contractor. The contracting officer is not rerequired to consider whether these licenses had been obtained when determining bidder responsibility, as it is a matter solely between the contractor and the appropriate government. Veterans Administration - Request for Advance Decision, B-184384, July 29, 1975, 75-2 CPD 63; City Ambulance Company, Inc., B-184471, October 9, 1975, 75-2 CPD 226.

In contrast, section D.2 provided more specifically that:

> "D.2. Each bidder will submit with his bid evidence of valid permits required by the states of Virginia and Maryland for performance of contract services. Bidders failing to submit such evidence will be rejected as nonresponsible."

This requirement of the solicitation, as a matter of bidder responsibility, could have been complied with up to the time of award of the contract or even as late as the time for performance. Mid South Fire Protection, Inc., B-180390, February 25, 1974, 74-1 CPD 102.

Further, the specific type of evidence required by the quoted clause was not stated. Halifax interpreted it as referring to permits to perform security guard services. The procuring agency suggests that the other bidders believed that they need not have submitted Virginia or Maryland licenses because the services were to be performed on Federal property.

Thus, we agree that ambiguity existed as to whether permits were actually required, and, if so, whether they had to be submitted with the bids despite the clear import (clause "D.2") of the requirement as a factor of responsibility, or whether it was a matter between the contractor and the appropriate government (clause "C-34") with no impact on responsibility.

As to overstatement of needs, while a contracting officer may decide that possession of a particular State or local license is needed to assist in determining bidder responsibility, 53 Comp. Gen. 51 (1973), the contracting officer here did not require licenses for that purpose. The record indicates that she erroneously thought licenses were required by Maryland and Virginia. Since performance was to occur on Federal property, it has been determined that these licenses were not necessary. Thus, the solicitation contained a requirement in excess of the Government's needs.

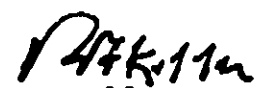
The fact that a solicitation is deficient does not necessarily justify its cancellation. If the bidders offer to meet the Government's actual requirements, and no parties will be prejudiced when no unfair or unequal treatment is evident, the solicitation need not be canceled because of deficient specifications. See Joy Manufacturing Company, 54 Comp. Gen. 237 (1974), 74-2 CPD 183; Domar Industries, supra. However, we do not believe the facts in this case justify a reinstatement.

Since, at most, the defects in the three bids lower than the protester's went to responsibility, Halifax is incorrect in contending that it was the only responsive bidder. The agency states that some of the other bidders were in the process of requesting permits and since all bidders appeared to be guard service companies, there was no reason to believe that they would not have obtained the permits and, therefore, have been deemed responsible but for the cancellation. In this regard, the third low bidder was the incumbent.

Additionally, the unnecessary license requirement may have had an impact on the bid prices, as the cost of obtaining a license may or may not have been included in the bids. In this connection, we observe that the competition was very close with respect to the two possibly eligible low bids which did not comply with the requirement. Those bids were less than $1,000 apart on bids approximating $130,000. The contracting officer does not intend to include this requirement upon resolicitation. Moreover, the requirement may have been restrictive of competition, as potential bidders may have refrained from bidding because they did not possess the Virginia or Maryland licenses.

Halifax's contention that it was placed at a competitive disadvantage by the cancellation is without merit, because as the fourth lowest bidder for award purposes, it will be able to recompete with the knowledge of the bids lower than its own which might have been eligible for acceptance but for the cancellation.

Under these circumstances, the cancellation of the IFB was not objectionable and resolicitation without the license requirement would be proper. See Domar Industries, supra; Cummins-Wagner Co., Inc., B-186686, September 21, 1976, 76-2 CPD 264. Therefore, the protest is denied.



Deputy Comptroller General
of the United States