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DECISION



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

FILE: B-198654, B-199827

DATE: February 24, 1981

DIG 06209

MATTER OF: Gentech Division of Indian Head

[Protest of IFB Cancellation After Bid Opening]

DIGEST:

Where record indicates that compliance with invitation specification was practically impossible, that is, extremely or unreasonably difficult, cancellation of invitation after bid opening for purpose of revising specification to remove restrictive aspects of specification was reasonable.

Gentech Division of Indian Head protests the cancellation, after bid opening, of invitation for bids No. 5FCC-33-80-021, issued by Region 5 (Chicago) of the General Services Administration Federal Supply Service (FSS), for requirements-type contracts covering FSC 8135 gummed paper tape conforming to Federal Specification PPP-T-45D (Federal Specification).

Four of the 178 firms solicited submitted bids. One bidder was found to be nonresponsive. The bids of two other bidders were rejected as nonresponsive because of exceptions taken in their bids to the Federal Specification basis weight, tensile strength, and tear resistance requirements. Only the bid of Gentech, the incumbent contractor, was responsive.

Prior to and after bid opening, the nonresponsive bidders complained that the specification requirements could no longer be met by their or other firms' standard commercial products. The solicitation was then canceled pursuant to Federal Procurement Regulations (FPR) § 1-2.404-1(b)(1) (1964 ed. amend. 121) due to deficient specifications. A resolicitation was subsequently issued and opened after the Federal Specification had been revised to eliminate certain objectionable requirements.

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Gentech protests the cancellation and requests award under the original invitation contending that the cancellation violated the spirit and intent of FPR § 1-2.404-1, which requires the Government to make every effort to anticipate any possible specification changes prior to bid opening. Gentech notes that, while the paper base (which must meet the three above-cited requirements) for these tapes is difficult to obtain now and then, it did obtain the paper base and it contends that others could have obtained it also. Gentech further questions whether the differences between the original and revised Federal Specification are significant enough to warrant cancellation. Finally, it is contended that Gentech has been prejudiced by the exposure of its bid prices.

The FSS argues that the Federal Specification as written is "practically impossible" to meet and is, consequently, unduly restrictive of competition and unrepresentative of the Government's minimum needs. The fact that the bid prices of Gentech have been exposed is not believed by the FSS to be prejudicial to Gentech since bidders under the revised specifications would not be submitting prices on the same items solicited under the original invitation.

We believe that the FSS cancellation of the invitation to revise the specification was proper. The FSS determination that the unrevised specification was practically impossible to meet and, as such, was restrictive of competition and unrepresentative of its minimum needs appears to be reasonable. In this respect, we note that impossibility is defined to mean not only strict or absolute impossibility but also impracticability because of extreme, excessive, or unreasonable difficulty. H. B. Zachry Company v. Travelers Indemnity Company, 391 F.2d 43 (1968); Westinghouse Electric Company, 54 Comp. Gen. 699, 75-1 CPD 112; Keco Industries, Inc., B-191856, April 5, 1979, 79-1 CPD 234.

Trade associations had advised the FSS that the unrevised specification was no longer consistent with industry standards for commercial paper. While Gentech was able to find conforming paper, even Gentech admits to the occasional difficulty in obtaining compliant

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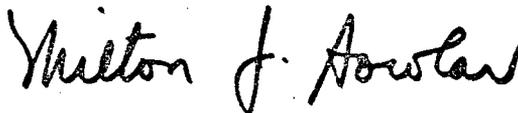
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material. Other bidders, however, would have had to find a supplier willing to make a special production run of items compliant with the specification.

Because of this, we find no abuse of the broad discretionary authority vested in contracting officers to cancel and resolicit. We have held that where specifications are, in some measure, difficult or impossible to meet and thereby restrict competition by overstating minimum needs, revision of a specification to increase competition is a proper basis to cancel an invitation even after bid opening. Westinghouse Electric Company, supra; Keco Industries, Inc., supra.

We share Gentech's concern that the FSS used this deficient specification in a solicitation. However, the record indicates that this occurred due primarily to a lack of communication between various FSS components and not to any attempt to prejudice Gentech.

Accordingly, the protest is denied.



For the Comptroller General
of the United States