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DECISION

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

[Protest of IFB Cancellation]

FILE: B-200965 DATE: April 23, 1981

MATTER OF: Schindler Haughton Elevator Corporation

DIGEST:

Where IFB provides that aggregate award for two items is contemplated but agency discovers after bid opening that it no longer needs work under item 2, agency properly may cancel entire solicitation and readvertise instead of making award for item 1 under IFB, since inclusion of aggregate award provision may have prevented potential bidders from submitting bid.

Schindler Haughton Elevator Corporation (Schindler) protests the cancellation after bid opening of invitation for bids 583-18-81 (IFB-1) and the issuance of invitation for bids 583-23-81 (IFB-2) by the Veterans Administration (VA).

Schindler contends that the VA did not have a "compelling reason" to cancel IFB-1. Schindler asserts that by issuing the second invitation for the same requirements as in IFB-1, the VA, in effect, conducted an auction by resoliciting the procurement after bid prices were exposed.

We deny the protest.

IFB-1 required bidders to furnish all labor, equipment and supplies necessary to maintain elevators and dumbwaiters in various buildings at two VA medical centers. The IFB's schedule consisted of four groups of elevators: group A included elevators at one VA medical center, group B included elevators at a second VA medical center and groups C and D included additional elevators at the first medical center which would be subject to maintenance sometime after contract award. The IFB required bidders to insert a monthly price for items 1a, 1b and 1c as follows:

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Item No.		Amount
1a.	Full Maintenance Service Items [Group] A and B, Cost per Month	$_____
1b.	Full Maintenance Service Items [Group] A, B, and C, Cost per Month	$_____
1c.	Full Maintenance Service Items [Group] A, B, C and D, Cost per Month	$_____

In addition, item 2 of IFB-1 requested a bid price for furnishing labor, materials and equipment necessary to bring all elevators in Group A and B up to certain code standards and to complete repairs on these elevators as indicated by the VA in an elevator inspection report. IFB-1 advised that:

> "It is contemplated that items 1(a,b, c,) thru 2 will be awarded to the * * * bidder quoting the lowest aggregate price for all items. In the event an aggregate bid is not received for all items, the Veterans Administration reserves the right [to make award by item, including multiple awards]."

The VA did not send the inspection report to any of the prospective bidders. During the week prior to bid opening, however, inquiries from bidders prompted the VA to mail them a copy of the report. One bidder, Schindler, came to the VA to pick up the report.

Schindler was the low bidder for items 1a, 1b, 1c and 2 and the only bidder which entered a bid price for all items. The other two bidders, Montgomery and Fairhall Elevator Inc., the incumbent contractor, while submitting bid prices for items 1a, 1b and 1c, did not enter a price for item 2 because they did not receive the inspection report before bid opening.

Because Fairhall and Montgomery had not received the inspection report, the contracting officer rejected all bids and canceled IFB-1. The VA then decided that it no longer needed item 2, because the agency's engineers determined that Fairhall already should have performed most of these repairs under its existing contract. IFB-2, consequently, only included items 1a, 1b and 1c and advised bidders that award would be made for either 1a, 1b or 1c. (Originally IFB-2 was issued as a small business set-aside, but later this restriction was deleted.)

IFB-2 was mailed to all of the bidders on the original bidders list. Aside from Montgomery, Fairhall and Schindler, three other firms submitted bids. Montgomery and Schindler submitted the same bids for item 1 as they had in the first procurement. Fairhall submitted the low bid on this solicitation, substantially reducing its original bid prices.

Contracting officers have broad authority to reject all bids and readvertise. However, because the cancellation of a solicitation after bid opening and after prices are exposed tends to discourage competition, the Federal Procurement Regulations (FPR) and our cases require that the contracting officer have a "compelling reason" to reject all bids and cancel a solicitation after bids have been opened. FPR § 1-2.404-1 (1964 ed.); GAF Corporation; Minnesota Mining and Manufacturing Company, 53 Comp. Gen. 586 (1974), 74-1 CPD 68. In this connection, we have held that a "compelling reason" to cancel a solicitation and readvertise exists where the invitation contains specifications which do not represent the Government's minimum needs and, therefore, are unduly restrictive of competition. See Canadian Commercial Corporation, B-196325, July 28, 1980, 80-2 CPD 70.

Here, even though IFB-1 originally was canceled because two bidders did not receive the elevator inspection report, it is apparent that the solicitation also did not reflect the actual minimum needs of the VA because it included repair work (item 2) which properly should have been performed under a prior contract. In this connection, the VA advises that item 2 should not have been included in IFB-1 in the first place.

Normally, when a solicitation erroneously includes work for an item which the agency doesn't need or a solicitation defect directly affects only a portion of

the invitation's bid items, the contracting officer should, in effect, cancel only the affected portion of the solicitation and award the remainder. See Pacific West Constructors, B-190387, January 24, 1978, 78-1 CPD 63; Hampton Metropolitan Oil Co., B-186030, December 9, 1976, 76-2 CPD 471.

Unlike the solicitations in the cited cases, however, IFB-1 did not reserve to the Government the right to accept any item or group of items of any bid. Instead it contained an aggregate award clause which stated that a contract would be awarded to the bidder submitting the lowest aggregate price for items 1 and 2.

Generally, an IFB provision requiring that one aggregate award be made in lieu of multiple awards is viewed as contrary to the requirement to maximize competition. 52 Comp. Gen. 47 (1972); B-179253, October 4, 1973. This is because an aggregate award clause might dissuade potential bidders, which could submit bids on a single item, from submitting a bid. See 52 Comp. Gen. supra; B-143263, July 28, 1960. Therefore, the use of such a provision is proper only when an agency's needs require that a single award be made. Com-Tran of Michigan, Inc. B-200845, November 28, 1980, 80-2 CPD 407. If the agency's needs do not so require, a solicitation which contains an unjustified aggregate award provision is unduly restrictive of competition. Roy's Rabbitry, B-193628, May 2, 1979, 79-1 CPD 305.

We believe the situation here is analogous to situations where aggregate award provisions are improperly used. At the time it issued the first solicitation, the VA did not need the repair work under item 2; nonetheless, by virtue of the aggregate award provision it required bidders to consider the possibility that only one award for both items 1 and 2 would be made. This could have adversely affected competition by discouraging from bidding potential bidders which would have otherwise submitted a bid only for item 1. This appears to be a distinct possibility here, since the VA advises that the item 2 repair work included the replacement of hoist ropes on two elevators which is very costly. This obviously could have discouraged certain firms, particular small business concerns unable to or unwilling to bear the expense for the repair work, from bidding. See, e.g., 52 Comp. Gen. 47 supra; B-143263,

January 28, 1960 (where potential bidders were prejudiced in a similar manner). In this connection, we note that in response to the second invitation three additional bids (including bids from two small business concerns), aside from those of Fairhall, Schindler and Montgomery, were received. Consequently, we do not think the initial solicitation resulted in the maximum practicable competition required by FPR 1-1.301-1 (1964 ed.), and we therefore believe that the contracting officer properly canceled it. See Roy's Rabbitry, supra.

The protest is denied.

Although we deny the protest, we think the inclusion of item 2 in the initial solicitation reflects poor procurement planning on the part of the agency which unfortunately resulted in the need for a resolicitation after exposure of bid prices with its obvious adverse effect on the competitive system.

Milton J. Socolar

Acting Comptroller General
of the United States