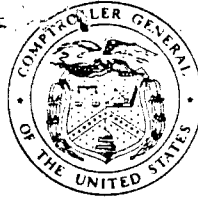


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DECISION



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

FILE: B-200890

DATE: May 22, 1981

MATTER OF: Oregon Typewriter and Recorder  
Company

DIGEST:

*[Protest of Bid Rejection as Nonresponsive]*

Where IFB was unreflective of  
procuring agency's needs such  
that award would not serve  
agency's needs and would prej-  
udice other concerns, cancella-  
tion of IFB was proper.

Oregon Typewriter and Recorder Company (Oregon Typewriter) protests the rejection by the Army Corps of Engineers (Corps) of its bid submitted in response to invitation for bids (IFB) No. DACW57-80-B-0162 and the subsequent decision by the Corps to cancel the solicitation and readvertise.

On August 22, 1980, the Portland District of the Army Corps of Engineers issued a solicitation for a 1-year lease, with an option to buy, of a word processing system. The required system components, together with the total rental periods (number of components multiplied by 12 months) involved, were set forth in the IFB's schedule, as follows:

				Rental Month
"0001	Five	Stations	60	
0002	Four	Stations with Math Package	48	"
0003	Two	Stations with Communication Ability	24	"
0004	Five	Printers	60	"

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0005	One	Long Carriage Printer	60	"
0006	One	OCR (Optical Character Recognition)	12	" "

The IFB further provided that the low offer would be determined by adding together the "purchase price and one-half of the lease charge [price for the total rental periods.]"

A reasonable reading of the IFB discloses that there is a patent discrepancy in item 0005; namely, the stated quantity of units (1 printer) is at variance with the 60 rental months listed for the item. Under the stated 1-year lease period, the correct rental period of the single item should have been only 12 months.

Oregon Typewriter brought this discrepancy to the attention of the procuring activity prior to bid opening. Nevertheless, the Corps, according to the company, informed it that there was "no need to change the IFB regarding the ambiguity" as "they [the Corps] would adjust the line item price" after bid opening to compensate for the error. Considering this advice, Oregon Typewriter submitted a bid with two total lease changes--one based on the stated 60-month rental for item 0005 and another based on the actual 12-month rental for that item.

Of the four bidders who submitted bids, the Corps states that two "misunderstood the schedule [apparently in regard to item 0005]" and, as a result, "filled the schedule out inaccurately." Oregon Typewriter submitted the apparent low bid. Upon technical evaluation, however, its equipment was found not to comply with the specifications set forth in the solicitation, and its bid was rejected as nonresponsive. On October 10, 1980, the day after completion of the technical evaluation, Oregon Typewriter mailed a letter of protest to our Office.

Subsequent to the filing of Oregon Typewriter's protest, the Corps initiated a review of the bids submitted and the specifications outlined in the solicitation. Pursuant to this review, the Corps revised its prior position and decided that the erroneous bidding on item 0005 could not be cured by "adjustment." Moreover, the Corps also decided that its specification for an "Optical Character Recognition" (OCR) device had improperly restricted competition. As stated by the Corps:

"Due to the OCR being included on the original specifications, many vendors were unable to submit a bid. This was due to the fact that many vendors do not manufacture OCR's. This was not determined until after bid opening."

Finally, the Corps was of the view that other "specifications as drafted did not accurately reflect the minimum needs of the procuring agency." For example, in regard to the "Display Station Features" of the system, the Corps states:

"Original specification called for 16 lines of text display on screen.  
\* \* \* Original specification excluded some bidders. After review it was determined the Corps could live with a minimum of 14 lines of text display."

Given these circumstances, the contracting officer concluded that cancellation of the IFB and readvertisement of the requirement would be in the best interest of the Government. The solicitation was canceled, therefore, on October 22, 1980.

The requirement was resolicited in January of this year. The Corps informs us that nine bids were received on the resolicitation. This bidding result, in the Corps' view, was "mainly due to the deletion of the OCR." Award was subsequently made in late January under the resolicitation.

Oregon Typewriter questions both the rejection of its bid and the cancellation of the initial IFB. The issue of whether Oregon Typewriter's bid was

responsive will not be addressed since proper cancellation of a solicitation renders academic a protest concerning award procedures involved under that solicitation. Kentron International, Inc., B-195789, March 7, 1980, 80-1 CPD 180. Because of our conclusion, below, upholding the propriety of the IFB's cancellation, this aspect of the protest is dismissed. We thus turn to the second ground of protest, i.e., that the contracting officer ought not to have canceled the solicitation and readvertised the requirement.

Subsection (a) of Defense Acquisition Regulation (DAR) § 2-404.1 (DAC #76-17, September 1, 1978) provides that after bids have been opened, award must be made to the lowest responsive, responsible bidder, "unless there is a compelling reason to reject all bids and cancel the invitation." Subsection (b)(i) further states that "invitations for bids may be canceled after opening but prior to award when such action is consistent with (a) above and the contracting officer determines in writing that inadequate or ambiguous specifications were cited in the invitation." As noted above, the Corps justified its decision to cancel the solicitation on the grounds that the original invitation was both ambiguous and unreflective of the Government's true needs. We have recognized on many occasions that the decision to cancel an invitation is an administrative matter, and the judgment of the contracting officer will not be challenged unless the protester can demonstrate that the decision was clearly arbitrary, capricious, or not supported by substantial evidence. Cottrell Engineering Corp., B-183795, September 22, 1975, 75-2 CPD 165; Uni-Con Floors, Inc., B-193016, April 19, 1979, 79-1 CPD 278; Kentron International, Inc., above.

Oregon Typewriter argues that since it pointed out the ambiguity in the schedule prior to bid opening, cancellation of the bid is not justified; moreover, the company alleges that the Corps "dropped other [specification] requirements prior to the initial release of the IFB" and that a Corps' employee stated that the "remaining requirements [those involved in the initial bidding] were the minimum standards that the Corps could accept."

We have previously held that a procuring agency is not precluded from canceling an invitation after bid opening simply because, prior to the opening, it failed, as here, to correct an IFB ambiguity even though it had been informed of the ambiguity. Uni-Con Floors, Inc., B-193016, above. Nevertheless, it is regrettable that the Corps did not correct the ambiguity prior to bid opening. Moreover, even if the Corps was of the view that it had properly specified its needs prior to the initial release of the IFB, we cannot conclude that the Corps was precluded from reassessing the adequacy of those needs after bid opening.

Although we do not have enough detailed information to decide whether the ambiguity resulted in actual prejudice to any bidder, Oregon Typewriter has failed to persuade us that the contracting officer's determination to cancel the IFB was arbitrary. On the contrary, the evidence presented in the record, noted above, supports the contracting officer's position that, at a minimum, the IFB did not reflect the Corps' actual needs for this requirement with respect to the OCR device.

Although an award may be made under an inadequate solicitation if the actual needs of the Government would be served and the rights of others would not be prejudiced (Ingersoll-Rand Company, B-192279, October 5, 1978, 78-2 CPD 258; Isometrics, Inc., B-192151, September 13, 1978, 78-2 CPD 198), an award would be inappropriate here. An award to Oregon Typewriter under the solicitation as issued would not serve the actual needs of the Government as set forth in the revised solicitation. Furthermore, several concerns were precluded from bidding by the original system description which required an OCR device.

Since the contracting officer acted reasonably in deciding to cancel the invitation for bids and readvertise, the protest is denied.

*Milton J. Aroslan*

Acting Comptroller General  
of the United States