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DECISION



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

FILE: B-209028

DATE: May 16, 1983

MATTER OF: Nassau Tool Works, Inc.

DIGEST:

Cancellation of a solicitation is proper where there is no offeror eligible for award. Solicitation which contemplates research, development and redesign and in which the Government specifically refuses to guarantee specifications involves more than a build-to-print effort. Proposal which contemplates a build-to-print effort therefore may be found technically unacceptable.

Nassau Tool Works, Inc. (NTW), protests the cancellation of request for proposals (RFP) No. F33657-82-R-0120 by the Air Force.

We deny the protest.

The Air Force issued the RFP in response to NTW's inquiries concerning a proposed sole-source award of the contract to the Wayne H. Coloney Corporation (Coloney). The procurement is for a follow-on production contract to a development contract awarded to the Battelle Memorial Institute for the development of a gun gas diverter for use on the A-10 aircraft. This device, known as the "Battelle XPD stripper," was intended to solve an engine problem on the A-10 which results from the ingestion of exhaust gases produced when the plane's GAU-8 gatling-type cannon is fired. In its final form, the RFP requested offerors to discuss in their technical proposals "all technical tasks required to accomplish the fabrication, assembly, test and delivery of the XPD device," including engineering design capability and "get well" plans in the event that redesign should be necessary. The RFP also incorporated a set of questions and answers which included the following (paraphrased):

Question: When the Government provides drawings and specifications, it makes certain warranties concerning producibility and performance. It is requested that

the Government insert a clause providing that, if the products are built to these specifications, a satisfactory product and performance will result.

Answer: The blueprints are not considered adequate for open competition and the Government will not guarantee them.

Question: The RFP contains a patent clause. Is this appropriate in an effort not involving research and development?

Answer: Although this RFP is primarily for production, some research and development may be required prior to final production.

The contractor would be required to warrant the XPD's for 2 years or 50,000 rounds.

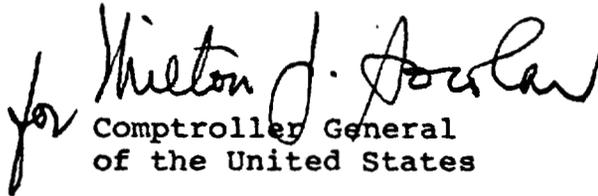
Coloney and NTW were the only offerors. The Air Force determined NTW's proposal to be technically unacceptable, because NTW did not adequately address the performance and technical requirements stated in the RFP, and found Coloney, the only technically acceptable offeror, to be nonresponsible. Therefore, the Air Force canceled the RFP.

NTW contends that the cancellation of the RFP was arbitrary and capricious. In support of this contention, NTW argues that the RFP was a build-to-print effort and asserts that its proposal was adequate and acceptable for performance on a build-to-print basis and should have been evaluated on that basis rather than against a performance requirement. In these circumstances, NTW asserts the Air Force improperly ignored a qualified and acceptable offer by canceling the solicitation. NTW concedes that its entire protest rests on whether the solicitation is a build-to-print effort.

We find no merit in NTW's protest. We read the questions and answers cited above and the warranty requirements of the RFP as clear indications that the RFP contemplated something more than a build-to-print effort by the

contractor. In this respect, we note particularly that the first question mentioned above was an effort by a prospective offeror to convert the solicitation to a build-to-print basis which was rejected by the Air Force. Moreover, we find the need for offerors to provide for research and development and redesign effort to be inconsistent with a strict build-to-print effort. In these circumstances, we agree with the Air Force that the RFP contemplated more than building XPD's from the drawings. Consequently, we find that the Air Force evaluated NTW's proposal using the appropriate criteria.

In our view, once it was determined that there were no offerors eligible for the award of the contract, the Air Force had no alternative but to cancel the RFP. In sum, we find that the cancellation was proper.

for 
Comptroller General
of the United States