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DECISION



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

FILE: B-210483

DATE: June 21, 1983

MATTER OF: Atkinson Marine Corporation

DIGEST:

Cancellation of solicitation and resolicitation for barge drydocking and overhaul were proper where agency reasonably determined that initial solicitation specifications did not reflect agency's actual requirements.

Atkinson Marine Corporation (Atkinson) protests the cancellation of invitation for bids (IFB) No. N62791-83-B-0050 and the resolicitation of the requirements under IFB No. N62791-83-B-0072 by the Supervisor of Shipbuilding, Conversion and Repair, United States Navy, San Diego, California (Navy). Atkinson contends that the cancellation was improper and requests our Office to reinstate the original IFB and award the contract to Atkinson as the lowest responsive and responsible bidder. Atkinson's protest is denied.

Background

The Supervisor of Shipbuilding, Conversion and Repair, issued the original IFB on December 15, 1982, for the drydocking and overhaul of the YOG-88, a self-propelled fuel barge attached to the United States Naval Station in San Diego. An amendment to the solicitation provided that bids would be received until January 4, 1983.

Bids were opened on January 4, 1983. Triple "A" South was the apparent low bidder and Atkinson was the apparent second low bidder. On January 5, 1983, Atkinson requested the contracting officer to consider Triple "A" South's bid nonresponsive and to award the contract to Atkinson. Atkinson alleged that Triple "A" South's bid was contingent upon the company's ability to refurbish its drydock for the overhaul or upon its ability to arrange to berth the dock within the San Diego Unified Port District.

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Also, on January 5, 1983, the contracting officer was advised of the need for substantial changes to the work requirements set forth in the IFB. Accordingly, on January 6, 1983, the contracting officer decided to cancel the existing solicitation and to readvertise the procurement. All bidders were notified of the contracting officer's decision; Atkinson filed its protest with our Office on January 7, 1983.

The new IFB was issued on January 21, 1983, and bids were opened on February 3, 1983. Triple "A" South was the apparent low responsive and responsible bidder. On February 11, 1983, after being unable to notify our Office due to weather conditions in Washington, the agency awarded the contract to Triple "A," notwithstanding the pending protest, because it believed that a delay in the completion of the overhaul would adversely affect the postoverhaul operational commitments of the YOG-88. Our Office was informed of the contract award on February 14, 1983.

Atkinson's Protest

Atkinson contends that the resolicitation was improper and that the reasons cited for the resolicitation are not "compelling reasons" as required by applicable procurement regulations.

The agency claims that the resolicitation was justified because the changes in work requirements and the revisions to the specifications were considerable and, for the most part, would have required reentry into systems which were included in the original solicitation. The Navy estimated that the revised requirements would increase the scope of the work by as much as 25 percent and could take as long as 6 additional weeks to complete if performed subsequent to the requirements set forth in the original solicitation.

Atkinson contends that its position is supported by the facts that (1) the revised solicitation allowed the same amount of time for performance (134 days) as did the initial solicitation and (2) no bid submitted in response to the revised solicitation increased by more than 11.7 percent, an amount lower than the agency's estimate of as much as a 25-percent increase.

We support the agency position that Atkinson's protest is without merit and that the Navy's cancellation of the solicitation in order to revise the specifications was proper.

The Defense Acquisition Regulation (DAR) states that, after bids have been opened, award must be made to the responsible bidder who submits the lowest responsive bid, unless there is a compelling reason to reject all bids and cancel the invitation. DAR § 2-404.1(a) (1976 ed.). A number of reasons considered sufficiently compelling to justify cancellation are listed, including inadequate or subsequently revised specifications cited in the invitation. DAR § 2-404.1(b)(i) and (ii) (1976 ed.).

Our Office will not object to the cancellation of a solicitation containing inadequate specifications when an award under that solicitation would not satisfy the Government's legitimate needs. A&C Building and Industrial Maintenance Corporation, B-205529, December 15, 1981, 81-2 CPD 478. We have consistently recognized that Government procurement officials are generally in the best position to know the Government's needs and to draft appropriate specifications. School for Educational Enrichment, B-199003, October 16, 1980, 80-2 CPD 286. Contracting officers have broad discretion to determine whether a solicitation should be canceled and the contract reprocured, and we will not overturn such a decision unless there is an abuse of discretion. Apex International Management Services, Inc., B-200008, January 16, 1981, 81-1 CPD 24. On the basis of the facts presented here, we have no reason to question the Navy's determination that the additional work on the YOG-88 was necessary or the contracting officer's decision to resolicit the procurement.

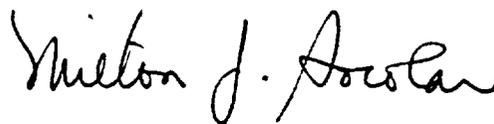
We do not believe that Atkinson's position that the Navy lacked compelling reasons to resolicit is supported by the fact that the resolicitation did not increase the amount of time allowed for performance. The Navy believed that the incorporation of the new requirements with the original requirements in a new solicitation would permit completion of all work within the 134 days originally specified since many of the new requirements called for work on the same systems as the original requirements. Therefore, although the Navy did not increase the performance time because of the reasons indicated, the fact remains that additional work was added to the original specifications.

While Atkinson contends that the bids on the resolicitation did not substantiate the Navy's estimate that the scope of work would increase by 25 percent, we find this argument unpersuasive. We have held that the prices resulting from a resolicitation are not relevant to a prior, reasonably based determination to resolicit. Custom Marine, Inc., B-198082, July 3, 1980, 80-2 CPD 9. In this case, whether the additional work increased the cost of performance by 25 percent as originally estimated by the Navy or by 11 percent as reflected in the bidding, the fact remains that, as anticipated by the Navy, the additional work added to the cost of performing the contract. Thus, the contracting officer had a reasonable basis to resolicit the procurement.

The protester suggests that the contracting officer should have awarded the contract under the original IFB and then modified the contract by revising the specifications after contract award. We do not agree.

Modifications to contract specifications are permitted when changes in the terms of a contract become necessary after contract award. Praxis Assurance Venture, B-190200, March 15, 1978, 78-1 CPD 203. However, the Government is not permitted to award a contract with the intention of significantly modifying it after award. Central Mechanical, Inc., B-206030, February 4, 1982, 82-1 CPD 91. When the need for such modifications is known prior to contract award, the agency should cancel the solicitation and readvertise, incorporating the revised specifications in the new solicitation. American Shipbuilding Company, B-207218, B-207218.2, November 9, 1982, 82-2 CPD 424. Since the contracting officer became aware of the changed requirements prior to contract award, the solicitation was properly readvertised.

We have not considered the protester's allegations that Atkinson, not Triple "A" South, was the lowest responsive and responsible bidder under the original solicitation since consideration of that matter is not relevant to the outcome of this decision.

for 
Comptroller General
of the United States