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DECISION

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

FILE: B-211917 **DATE:** November 15, 1983

MATTER OF: DOD Contracts, Inc.

DIGEST:

1. Where the services sought to be procured under some, but not all, of an invitation's bid items are no longer required and the solicitation taken as a whole contemplates and authorizes only a single aggregate award for all the bid items, then the agency has the necessary cogent and compelling reason to cancel the invitation for bids after all bid prices have been exposed.

2. A contracting officer may not award a contract under a specification knowing that the government's needs are different than that identified in the specification and that the specification accordingly must be changed after award.

DOD Contracts, Inc. protests the cancellation by the Department of the Navy of invitation for bids No. N62472-83-C-5100 and the Navy's subsequent resolicitation and award of a contract for custodial services at the Aviation Supply Office, Philadelphia, Pennsylvania. DOD Contracts contends that there was no compelling reason to cancel the solicitation. We deny the protest.

As originally issued on March 7, 1983, the first IFB included a single bid item and solicited bids for providing custodial services at the Aviation Supply Office for a period of 12 months. By revision of March 21, the Navy divided the work to be performed between two bid items, the first of which was for custodial services at three of the buildings at the Aviation Supply Office during May 1983, and the second of which was for custodial service at all of the buildings for the 11 months from June 1983 to April 1984.

The IFB required bidders not only to indicate a price for each of the two bid items and a unit price for each of the 11 months under item No. 2, but also required bidders

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to submit a total price apparently intended by the Navy to represent the sum of the prices bid for each item. When bids were opened on April 21, DOD Contracts, with a bid of $447,800, appeared to be the fourth low bidder. However, the Navy subsequently determined that the apparent low bidder had submitted an incorrect bid form. Further, after considerable delay during which the Navy attempted to confirm the bid prices of the apparent second and third low bidders, the Navy allowed these bidders to withdraw their bids. After the apparent third low bidder had requested withdrawal on May 9 on the basis of a mistake-in-bid claim, the Navy contacted DOD Contracts.

However, before a confirmation of its bid was received from DOD Contracts, the Navy determined that, since an awardee would be unable to perform custodial services during May 1983 as called for under item No. 1, the IFB should therefore be canceled. On May 10, 1983 the Navy issued IFB No. N62472-83-B-5101 resoliciting for the same services but with the schedule for performance revised so as to render it prospective. DOD Contracts thereupon protested to our Office.

When bids were opened on May 31, DOD Contracts, with a bid of $470,000, appeared to be the fourth low bidder. The Navy, after allowing the apparent low bidder to withdraw on the basis of a mistake-in-bid and determining that the second low bidder had failed to acknowledge an amendment incorporating a wage determination, made award on June 22 to the third low bidder, Dutch Boy Cleaning, on its bid of $438,987.

DOD Contracts alleges that there was no compelling reason to cancel the first solicitation, since the revisions made in the resolicitation were insubstantial and could easily have been accomplished by modification of a contract entered into with an awardee under the first solicitation. DOD Contracts further contends that, given a scheduled bid opening of April 21, it is unreasonable to assume that the Navy ever expected to make award during April. In support of this contention, DOD Contracts cites the Navy's continuing effort to make award even after May 1, an effort which, according to DOD Contracts, only ended because the Navy determined that any award would go to DOD Contracts. DOD Contracts also argues that the cancellation and resolicitation exposed its bid prices and created an auction.

We have previously held that, because of the potential adverse impact on the competitive bidding system of canceling an IFB after all bid prices have been exposed, cancellation must be based on cogent and compelling reasons. See American Mutual Protective Bureau, B-209192, May 3, 1983, 62 Comp. Gen. ___, 83-1 CPD 469. Defense Acquisition Regulation § 2-404.1(b)(iii) (Defense Acquisition Circular No. 76-17, September 1, 1978) provides that an IFB may be canceled after bid opening where the supplies or services being procured are no longer required. Given the likely further delays in award and commencement of performance, the Navy had a reasonable basis to conclude that the custodial services solicited under bid item No. 1 of the first solicitation were no longer needed and therefore a cogent and compelling reason to cancel the solicitation existed.

Admittedly, where the solicitation includes, but is not limited to, work for an item which the agency does not need, or has a solicitation defect which directly affects only a portion of the invitation's bid items, and the government has the right under the solicitation to accept any item or group of items of any bid, then the contracting officer should, in effect, cancel only the affected portion of the solicitation and award the remainder. See Schindler Haughton Elevator Corporation, B-200965, April 23, 1981, 81-1 CPD 315. However, although the solicitation here did not contain an explicit statement that a single aggregate award for all the bid items would be made, as required by Defense Acquisition Regulation § 2-201(a) L (vii) (Defense Acquisition Circular No. 76-30, 30 September 1981), nevertheless we believe that the solicitation taken as a whole contemplated and authorized only a single aggregate award for all the bid items. See General Aero Products Corporation, B-191870, July 25, 1978, 78-2 CPD 70. Not only did the solicitation include the requirement that offerors bid a total price for all the bid items, but the "term of contract" section of the solicitation also informed bidders that the contract would be effective for a period of 1 year. Further, the very division of work between the bid items itself suggests that a single aggregate award was contemplated. As a practical matter it would be unreasonable to select one contractor to supply custodial services at three buildings for the first month only to select another contractor to supply custodial services at all the buildings for the next 11 months.

As for DOD Contracts' contention that any revisions made in the resolicitation could have instead been accomplished by modification of a contract entered into with an awardee under the first solicitation, such a course of action would have been improper here. A contracting officer may not award a contract under a specification knowing that the government's needs are different from that identified in the specification and that the specification accordingly must be changed after award. See D-K Associates, Inc., 62 Comp. Gen. 129 (1983), 83-1 CPD 55; Allied Repair Service, Inc., 62 Comp. Gen. 100 (1982), 82-2 CPD 541.

The protest is denied.

Milton J. Socolar

Acting Comptroller General
of the United States