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DECISION



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

FILE: B-213428.3

DATE: October 22, 1984

MATTER OF: Power Equipment Inc.

DIGEST:

Agency had cogent and compelling reason to cancel IFB for generators where IFB had no specification for spare parts, which was one line item of IFB, or standard to evaluate bidder's proposed spare parts, because interests of both government and bidder are prejudiced by such vague specification.

Power Equipment Inc. (PEI) has claimed bid preparation costs for the allegedly wrongful cancellation of invitation for bids (IFB) DACA78-83-B-0005, issued as a small business set-aside by Middle East Division, United States Army Corps of Engineers (Corps), for diesel electric generator units and associated data, spare parts and technical services.

The IFB requested bids on item 0001, the diesel electric generator units; item 001AA, operation and maintenance data; item 001AB, installation/assembly instructions; item 001AC, recommended repair parts list; item 001AD, special tools and equipment list; item 0002, 1 year's operational spare parts; items 0003, 0004 and 0005, various technical representative services; and item 0006, air fare.

Under special provision H-20, line item 0002, "one year's operational spare parts," of the IFB bid schedule is defined and addressed as follows:

"These spare parts are those required for startup, maintenance and operations during the first year's operation period. List of these parts are required to be submitted with bid and will include a detailed cost for each item. Parts will be shipped with the engine generator sets."

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This is the only place in the IFB that these "operational spare parts" are addressed.

On October 7, 1983, bids were opened. On October 13, 1983, PEI, the sixth low bidder, protested that the five low bidders were nonresponsive or otherwise ineligible for award. After review by the Corps of Engineers, the first four bidders were rejected for various reasons. On February 9, 1984, the Corps denied PEI's protest against a proposed award to Williams and Lane. Energy Systems Corporation (Williams and Lane), the fifth low bidder.

PEI protested on that same date to our Office that Williams and Lane's bid was nonresponsive because (1) it failed to submit descriptive literature with its bid as required by the IFB; (2) it failed to submit with the bid a corporate certificate certifying the authority of the signer of the bid to sign on behalf of the corporation, and (3) it failed to submit the "spare parts" list with its bid required by special provision H-20.

After responding in its administrative report that the protest was not meritorious and reviewing the protester's comments on that report, the Corps, on March 9, 1984, canceled the IFB and resolicited the requirement. PEI protested this action on March 16, 1984. The basis given by the Corps for canceling the IFB and resoliciting was the "lack of objectivity," "ambiguity" and "uncertainty" of line item 0002, 1 year's operational spare parts. The determination and finding supporting the decision to cancel and resolicit states in pertinent part:

"2. . . . Power Equipment, Inc. (PEI), has raised the issue of lack of objectivity in the Government's specifications with respect to the requirement for operational spare parts.

"3. A thorough review of the solicitation has revealed that the IFB is completely void of any guidance with respect to the amount of operational hours the generators would be utilized. Consequently, the bidders were required to speculate as to the extent of utilization contemplated for the generators in pricing line item 0002. Such speculation resulted in the bid prices for line item 0002 to range from

a low of \$1,225.00 to a high of \$320,123.00. Thus, the ambiguity inherent in the specifications prejudiced the bidders in their preparation of bid prices and leaves uncertain whether the Government's minimum needs would be met by the procurement."

The Corps has further explained that the IFB contained no criteria for the government to use to evaluate and accept or reject the operational spare parts list required to be submitted with a bid by special provision H-20. Consequently, the Corps believed that the government could not be assured that its minimum needs for the operational spare parts would be met.

The resolicitation was a negotiated procurement with substantially identical provisions to the IFB, except that line item 0002 and special provision H-20 were deleted. Also, the resolicitation stated that the "startup parts" and "repair parts" lists to be submitted as contract deliverables under special provisions H-5 and H-6 were to be based upon 4,000 hours running time per engine generator per year.

Williams and Lane, as the low offeror on the resolicitation, was awarded the contract for the generator units. PEI also submitted a proposal on the resolicitation.

PEI argues that the IFB was not ambiguous because a careful reading of the specifications would have revealed that these generators were for "standby power." PEI contends that the individual determination made by bidders as to which 1 year's operational spare parts to supply by its bid was not "subjective," but rather was based on "objective standards of this industry." PEI asserts that there was, therefore, no compelling reason to cancel the IFB and resolicit because this requirement for the spare parts was sufficiently definitive. PEI contends that it was the low responsive and responsible bidder on the IFB and, therefore, is entitled to be awarded its bid preparation costs for the allegedly wrongful cancellation of the IFB.

We have consistently held that because of the potential adverse impact on the competitive bid system of canceling an IFB after all bid prices have been exposed, cancellation must be based on cogent and compelling

reasons. Downtown Copy Center, 62 Comp. Gen. 65 (1982), 82-2 C.P.D. ¶ 503; American Mutual Protective Bureau, 62 Comp. Gen. 354 (1983), 83-1 C.P.D. ¶ 469. Contracting officials have broad discretion in determining if a cogent and compelling reason exists, and a decision to cancel an IFB after bid opening will not be disturbed unless that decision lacks a reasonable basis. Arctic Corner Incorporated, B-209765, Apr. 15, 1983, 83-1 C.P.D. ¶ 414; Jackson Marine Companies, B-212882, Apr. 10, 1984, 84-1 C.P.D. ¶ 402. The fact that some of the terms of an IFB are in some way deficient does not in itself constitute a cogent and compelling reason. Dyneteria Incorporated; Tecom Incorporated, B-210684, Dec. 21, 1983, 84-1 C.P.D. ¶ 10; American Mutual Protective Bureau, B-209192, supra. In determining if there was an cogent and compelling reason to cancel an IFB and resolicit two factors must be examined: (1) whether the best interest of the government would be served by canceling an award under the subject solicitation, for example, would the government acquire what it really required by the IFB proposed to be canceled and (2) whether any bidder would be treated in an unfair and unequal manner if an award under the IFB were made. North American Laboratories of Ohio, Inc., 58 Comp. Gen. 724 (1979), 79-2 C.P.D. ¶ 106; Intercomp Company, B-213059, May 22, 1984, 84-1 C.P.D. ¶ 540. Where the invitation provisions are too vague, misleading or ambiguous to assure that the government is acquiring its real requirements, our Office has consistently found that both the bidders' and government's interests have been sufficiently prejudiced as to justify canceling an IFB after bid opening and resoliciting the requirement. Go Leasing, Inc.; Sierra Pacific Airlines, B-209202; B-209202.2, Apr. 14, 1983, 83-1 C.P.D. ¶ 405; Honeywell, Incorporated, B-210000, Apr. 22, 1983, 83-1 C.P.D. ¶ 445; Com-Tron, Inc., B-209235, May 9, 1983, 83-1 C.P.D. ¶ 486; Meds Marketing, Inc., B-213352, Mar. 16, 1984, 84-1 C.P.D. ¶ 318; Intercomp Company, B-213059, supra, at 5.

In the present case, there was effectively no specification for "operational spare parts" as called for in item 0002 of the IFB. Moreover, there was certainly no basis or standard stated to evaluate a bidder's proposed "operational spare parts." This could easily lead to a bidder offering less than the government required or much more than the government required, depending on whether the bidder wanted to minimize spare parts to obtain the award or maximize such spare parts to enhance the sales price. This uncertainty is not in the government's best interest.

Moreover, bidders had no guidance as to what spare parts would be acceptable to the government. These factors are clearly evidenced by the wide divergency of offered spare parts from bid prices ranging from \$1,225 to \$320,123 for item 0002. Before the IFB was canceled, the protester had asserted that the spare parts requirement lacked "objectivity," as evidenced by this wide bid divergency, which showed that this bid item meant very different things to the various bidders. The protester also had asserted that there was no industry standard or custom or objective basis for evaluating bids for item 0002.

The protester notes that the specifications mention that the generator units were intended for standby power and this is sufficient information on which a company may base its proposed spare parts. However, this comment, buried deep in the midst of the part of specification addressing relaying and instrumentation requirements for the generator units, is not sufficient guidance to permit an informed fixed-price bid for spare parts for these units on a formally advertised procurement. Nor does this mention provide sufficient protection to the government that its minimum needs are not being met or are being exceeded. Consequently, it is clear that there was a cogent and compelling reason to cancel the IFB.

Since we find the Corps acted properly in canceling the IFB, PEI is not entitled to its bid preparation costs.

The protest is denied.


Acting Comptroller General
of the United States