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DECISION



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

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FILE: B-211525.2

DATE: October 31, 1984

MATTER OF: Dyneteria, Inc.

DIGEST:

1. An invitation for bids may be canceled after bid opening and the exposure of bid prices when a cogent and compelling reason exists for doing so. As a general rule, changing the requirements of a procurement after bid opening to express properly the agency's minimum needs constitutes such a reason.
2. A contracting officer's decision to cancel after bid opening will not be questioned as long as it reflects a reasoned judgment based upon the investigation and evaluation of information reasonably available at the time the decision is made.
3. The integrity of the competitive bidding system precludes an agency from awarding a contract competed under given requirements with the intention of increasing those requirements after award. Such an action clearly would be prejudicial to the other bidders under the invitation, because the contractor would be awarded the new requirements essentially on a sole-source basis, thus circumventing the competitive procurement statutes.
4. In a procurement resulting from an OMB Circular No. A-76 comparison of in-house versus contracting costs, it would be detrimental to the competitive system to award a contract when the requirements which formed the bases for the comparative analysis are foreseen to change materially during the contract period.

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Dyneteria, Inc. protests the Department of the Air Force's decision to cancel invitation for bids (IFB) No. F41800-82-B-0812 after the opening of bids. Dyneteria asserts that the agency does not have a legally sufficient reason to justify the cancellation. We deny the protest.

Background

The solicitation for fuels management operations at Kelly Air Force Base, Texas for a base year and two option years (fiscal years (FY) 1983 through 1985), was issued as part of a cost comparison conducted in accordance with Office of Management and Budget (OMB) Circular No. A-76. The comparison indicated that it would be more economical for the government to contract for the operations than retain them in-house. After the withdrawal of the apparent low bid on the basis of mistake, Dyneteria was the apparent low bidder and in line for award. However, as the result of a preaward survey, the contracting officer determined Dyneteria to be nonresponsible. The firm then protested to this Office. In our decision on that protest, Dyneteria, Inc., B-211525, Dec. 7, 1983, 83-2 CPD ¶ 654, we sustained the protest, concluding that the Air Force's grounds for the nonresponsibility determination were in large measure unreasonable or unsupported. Accordingly, we recommended to the Secretary of the Air Force that a new determination be made about Dyneteria's capability.

Although the Air Force in fact began a new preaward survey on Dyneteria, the contracting officer canceled the solicitation because of anticipated increased requirements at Kelly due to the proposed reequipment of the base's Reserve and Air Guard components with different aircraft. The Reserve component was to convert from C-130 to C-5A transports, while the Air Guard component was to convert from F-4 to F-16 fighters. In light of these developments, the contracting officer determined that the original scope of work contained in the IFB no longer reflected the activity's actual minimum needs.

Protest and Analysis

Dyneteria complains that the proposed aircraft conversions do not constitute a sufficient legal reason to justify canceling the subject solicitation where bids have already been opened and prices exposed. The firm points out that new information reveals that the Air Guard component will not convert to F-16's until FY 1986, after completion of the last contract option year, and that the C-5A conversion will only impact operations at Kelly at the very end of FY 1985. Dyneteria believes that any increased requirements occasioned by the arrival of the C-5A aircraft will be minimal, and that any attendant adjustments to the contractor's workload can be accommodated by the Variation in Workload clause contained in the solicitation.^{1/}

The procurement regulations permit cancellation of an IFB after bid opening when cancellation is in the best interest of the government. Defense Acquisition Regulation, § 2-404.1 (b)(viii), reprinted in 32 C.F.R. pts. 1-39 (1983). Because of the potential adverse impact on the competitive bidding system of canceling an IFB after bid prices have been exposed, we have interpreted this to mean that the contracting officer must have a cogent and compelling reason to do so. Electric Maintenance & Installation Co., Inc., B-213005, Mar. 13, 1984, 84-1 CPD ¶ 292. As a general rule, changing the requirements of a procurement after the opening of bids to express properly the agency's minimum needs constitutes such a cogent and compelling reason, Winandy Greenhouse Company Inc., B-208876, June 7, 1983, 83-1 CPD ¶ 615, and we will not question the contracting officer's decision to cancel

^{1/}Clause H23 of the IFB, "Variation in Workload," provided that negotiations for an equitable price adjustment could be initiated by either the government or the contractor if, at the end of a contract period, the workload varied above or below 15 percent from the total estimated workload. Dyneteria contends that the increases in fuels operations due to the C-5A conversion will not approach 15 percent of the original scope of work.

as long as it reflects a reasoned judgment based upon the investigation and evaluation of information reasonably available at the time the decision is made. See Apex International Management Services, Inc., B-200008, Jan. 16, 1981, 81-1 CPD ¶ 24.

In this matter, the Air Force indeed acknowledges that the F-16 conversion will not take place until FY 1986, but states that this aspect of the anticipated changes in its needs did not in fact constitute a basis for the contracting officer's decision to cancel, which, the Air Force contends, rested solely upon the proposed C-5A conversion. Although pointing out that the original schedule for the arrival of C-5A aircraft at Kelly has since been modified, in that the schedule is now less immediate, the Air Force asserts that at least 8 aircraft are still projected to be assigned during FY 1985, and that this additional workload will significantly affect fuels management operations during that period.

Specifically, the Air Force states that overall manning requirements as well as the number of aircraft servicings and the total amount of fuel consumption will substantially increase due to the conversion. The Air Force projects a manning increase of nearly 34 percent to handle the additional workload, and emphasizes that the training of such additional personnel must begin well before the arrival of the first C-5A. Although recognizing that the actual increases in servicings and fuel consumption cannot be calculated with absolute certainty at this time, the Air force believes it would be improper to make an award now in the face of such foreseen changes in its requirements.

Dyneteria's essential basis for protest is that the decision to cancel was not the result of actual increased requirements, but rather was arbitrarily founded upon mere estimates of projected changes in the Air Force's needs and, therefore, did not meet the "cogent and compelling" standard to justify post-bid opening cancellation. Our analysis of the record, however, reveal nothing to indicate that the contracting officer's decision to cancel was not a reasoned judgment based upon the facts available

to her at the time the decision was made. Apex International Management Services, Inc., supra. The presence of new information which may, in hindsight, reduce somewhat the significance of earlier data does not obviate the soundness of that judgment.

Even though the C-5A arrival schedule is now less immediate, the Air Force continues to project the arrival of 8 aircraft by the end of FY 1985, which it asserts will materially impact upon Kelly's fuel management operations during that period. Dyneteria has offered its own estimates of anticipated increases in servicings and fuel consumption due to the projected conversion which are much lower than the agency's, but has not met its burden of demonstrating that the Air Force's estimates were arbitrarily derived or are essentially unrealistic. Since it is primarily for an agency to determine its minimum needs in relation to changed requirements, we will not question the reasonableness of such a determination absent a clear showing to the contrary. Winandy Greenhouse Company Inc., supra.

We note for the record that the C-5A is an extremely large, heavy logistics transport aircraft with a total fuel capacity of more than 51,000 gallons as compared with less than 10,000 gallons for the C-130,^{2/} and it is our view that the Air Force was clearly justified in determining that the proposed conversion would have a significant impact upon fuels management operations at Kelly. In that regard, we do not believe that the Air Force was obligated to establish with absolute certainty the increases in its requirements occasioned by the conversion before canceling the solicitation. To the extent that Dyneteria urges that any adjustments in the contractor's workload are embraced by the Variation in Workload clause, we agree with the Air Force that such a provision is intended to handle unknown contingencies for the protection of both the contractor and the government through equitable price adjustments, and not to accommodate anticipated increased requirements.

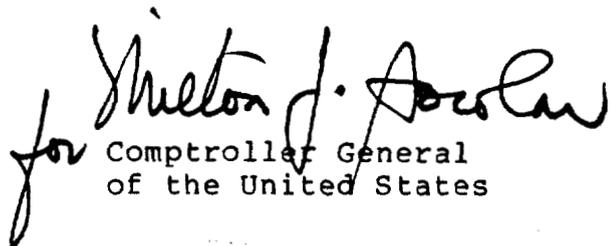
^{2/}See Jane's All the World's Aircraft 1983-1984, London.

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The integrity of the competitive bidding system precludes an agency from awarding a contract competed under given requirements with the intention of increasing those requirements after award. Such an action clearly would be prejudicial to the other bidders under the invitation because the contractor would be awarded the new requirements essentially on a sole-source basis, thus circumventing the competitive procurement statutes. See Pioneer Motor Inn, B-205727, May 17, 1982, 82-1 CPD ¶ 467. Accordingly, a situation involving increased requirements generally constitutes a cogent and compelling reason to cancel an IFB after bid opening. Id.; Winandy Greenhouse Company Inc., supra. Cf. Genco Tool and Engineering Co., B-204582, Mar. 1, 1982, 82-1 CPD ¶ 175, in which we indicated an exception where cancellation would not be appropriate if the increased requirements could be satisfied separately under a new procurement. Here, given the completely interrelated aspects of fuels management operations, we see no possibility that the C-5A requirements could be independently met.

Furthermore, just as it would be detrimental to the competitive system for the government to award a contract based on a cost comparison which did not conform to the terms of the solicitation under which bids were submitted, see Crown Laundry and Dry Cleaners, Inc., B-194505, July 18, 1979, 79-2 CPD ¶ 38, we think it would be detrimental for it to make an award when the requirements which formed the bases for the comparative analysis are foreseen to change materially during the contract period.

The protest is denied.

for 
Comptroller General
of the United States