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DECISION

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

FILE: B-216825 **DATE:** February 13, 1985

MATTER OF: Hoyer Construction Company, Inc.

DIGEST:

1. Decision to cancel solicitation was reasonable where the specifications were ambiguous and under circumstances provided a compelling reason to cancel the solicitation.

2. Oral resolicitation after cancellation of invitation for bids is not objectionable when record indicates use of such procedures was justified on basis of urgency.

Hoyer Construction Company, Inc. (Hoyer) protests the award of a contract for removal and replacement of floor coating to Rodenberg's Floor Coating, Inc. (Rodenberg) by Tinker Air Force Base (Air Force), Oklahoma, under request for proposals No. F34650-84-R-0115, which was orally solicited after the cancellation of invitation for bids (IFB) No. F34650-84-B-0488. We deny the protest.

The IFB was issued on September 10, 1984, with a bid opening date of September 24, 1984. The urgency of the requirement permitted only 14 days for bid preparation. Rodenberg and Hoyer submitted bids, and Rodenberg was the apparent low bidder. On September 25, 1984, the Air Force discovered that the specifications were incorrect; that 88,200-square feet of flooring needed to be removed instead of the 42,000-square feet listed in the solicitation. On September 26, 1984, the Air Force canceled the solicitation and decided to negotiate orally.

Rodenberg and Hoyer were notified by phone that the initial solicitation had been canceled due to a change in the specifications and that oral offers would be accepted, due to the urgency of the requirement. Rodenberg proposed $127,890 compared to its original bid price of $63,000. Hoyer proposed the same price it originally offered. The Air Force recorded this price as $363,384, using the same

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unit price Hoyer originally offered, $4.12 per square foot, and multiplying it by the new quantity. Hoyer contends that it meant its original extended price of $173,040. We find it unnecessary to resolve this discrepancy because Hoyer is not low under either offer. Award was made to Rodenberg.

Hoyer essentially contends that the Air Force acted improperly in canceling the IFB and resoliciting by oral negotiations. Hoyer advises that it made a site visit and discovered that the 42,000 square feet was not the total job. Further, Hoyer states that the contract drawing showed a figure in excess of 89,000 square feet. Therefore, Hoyer argues, because its original bid was based on 89,000 square feet, its bid was the only responsive bid (since Rodenberg also had the opportunity to make the same observations).

Contracting officers have broad discretion to determine whether a solicitation should be canceled. However, because of the potential adverse impact on the competitive bidding system of canceling after bid opening, a cogent and compelling reason must support the decision to cancel. The protester has the burden of showing that the contracting officer abused this discretion, since we limit our review to the question of whether the exercise of discretion was reasonable. Pacific Scientific Company, Gardner-Neotec Division, B-208193, Jan. 18, 1983, 83-1 C.P.D. ¶ 61.

Generally, the use of specifications which do not adequately describe the government's actual needs provides a compelling reason for cancellation, the fact that an invitation is in some way deficient does not, of itself, constitute a compelling reason to cancel if other bidders would not be prejudiced by an award under the solicitation and award would serve the government's actual needs. See id.; Turbine Engine Services Corp., B-215281.2, Aug. 21, 1984, 84-2 C.P.D. ¶ 206.

We find that the Air Force acted reasonably in canceling the solicitation and in conducting the reprocurement through oral negotiations. The specifications at best would have to be labeled as ambiguous because the figures for the job site and contract drawing were inconsistent with the 42,000-square feet estimate that appeared in the solicitation. It is a basic principle of federal procurement law that specifications must be sufficiently definite and free from ambiguity so as to permit competition on a

common basis. An ambiguity exists if specifications are subject to more than one reasonable interpretation. Delta Data Systems Corporation, B-213398, Apr. 17, 1984, 84-1 C.P.D. ¶ 430. The specifications here were subject to more than one reasonable interpretation and thus provided the contracting officer a compelling reason to cancel. The fact that Hoyer made a site visit and determined the actual requirements and that Rodenberg could have done so does not eliminate the ambiguity, since Rodenberg did not make such a visit nor otherwise learn of the discrepancy in time to base its bid on what the actual need was. That Hoyer may have submitted a bid based on the actual requirement in this instance is irrelevant.

Given the urgency of the Air Force's requirement, we find that the use of oral negotiations is not objectionable. All the proper determinations and findings required by regulation for use of oral negotiation procedures are in the record, see the Federal Acquisition Regulation, 48 C.F.R. § 15.402(f) (1984), and Hoyer was given the opportunity to compete on the resolicitation. Therefore, we have no basis to object to the Air Force's handling of this procurement.

The protest is denied.

for Seymour Efros
Comptroller General
of the United States