

Westfall

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DECISION



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

FILE: B-217049

DATE: July 1, 1985

MATTER OF: Summerville Ambulance, Inc.

DIGEST:

1. Cancellation of a portion of a solicitation which contains a flawed evaluation scheme and inaccurate estimates is justified where those defects made it impossible to accurately determine which bid represented the lowest cost to the government.
2. Award on another portion of the defective solicitation was proper where award would meet government's needs and no other bidder would be prejudiced.
3. GAO does not conduct investigations pursuant to its bid protest authority.

Summerville Ambulance Service, Inc. protests the cancellation of some of the requirements for emergency ambulance service and the award of others to Herbert's E.M.S., Inc. under invitation for bids (IFB) No. 534-12-85, issued by the Veterans Administration Medical Center, Charleston, South Carolina. We dismiss the protest in part and deny the protest in part.

The IFB requested prices on 12 line items.^{1/} As interpreted by the parties, Items 1 and 3 were included to price ambulance services which require a 45-minute response time, with Item 1 applying to trips made during daytime and Item 3, to trips made at night. Items 2 and 4 were similar to Items 1 and 3, respectively, except that they concerned trips requiring a 15-minute response time.

^{1/} The schedule and the bids on Items 1 and 6 are set forth in an appendix to this decision.

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Items 5 and 6 were included to allow a per mile surcharge for trips outside city limits. In Item 5, bidders were to submit a surcharge which, when added to the base price under Items 1 and 2, would apply to out-of-city trips. Item 6 allowed a similar surcharge, which would be added to the base price established for trips under Items 3 and 4.^{2/}

VA concluded it could not determine the low bidder for 45-minute trips (Items 1 and 3) because the IFB provided no basis for allocating the surcharges under Items 5 and 6. VA noted that Items 1 through 4 priced ambulance service on a per trip basis while Items 5 and 6 were based on mileage. The IFB contained an estimate of 25,000 miles for out-of-city day trips subject to the surcharge in Item 5, but did not indicate how much of this mileage was allocable to day trips requiring a 45-minute response time (Item 1) or to 15-minute response time trips (Item 2). Similarly, the IFB did not indicate how the surcharge in Item 6 (for night out-of-city mileage) was to be allocated between the base rates established in Items 3 and 4. VA found that either Summerville or Herbert could be evaluated as low for 45-minute trips, depending upon how out-of-city mileage was allocated. When conducting this evaluation, VA also found that the estimated mileage and number of trips included in the IFB were grossly in error. In the circumstances, VA decided to cancel the solicitation, revise it, and resolicit bids for 45-minute trips.

Summerville objects to VA's action because, Summerville says, it was the low bidder on Item 1, at least if all of Item 5 is added to its Item 1 price. The protester argues that it is improper and unfair to award Items 2 and 4 to

^{2/} Technically, Items 1 through 4 exclude out-of-city trips with Items 5 and 6 applying only to such trips. Such an interpretation would justify awarding Items 1 and 3 to Herbert, not Summerville, could have resulted in the selection of different contractors to answer calls inside and outside the city limits, but was never intended by VA. Rather, both VA and Summerville appear to have assumed that a composite award would be made for trips within and outside the city.

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Herbert while canceling the items upon which Summerville may have submitted the low bid. Summerville contends that VA should determine how much of Items 5 and 6 is allocable to day and night trips under Items 1 and 3 and make award to it if it is low on that basis. Summerville charges that VA has not done so because of bias favoring Herbert. In addition, Summerville notes that before bid opening it informed the contracting officer that the estimates actually included in the solicitation appeared to be overstated.

An IFB may be canceled after bid opening only when a compelling reason for cancellation exists. Deere & Co., B-206453.2, Nov. 1, 1982, 82-2 CPD ¶ 392. Where a solicitation contains an evaluation scheme which does not insure that award will be based on the lowest cost to the government, Go Leasing, Inc.; Sierra Pacific Airlines, B-209202; B-209202.2, Apr. 14, 1983, 83-1 CPD ¶ 405, or contains estimates which are other than reasonably accurate representations of actual anticipated requirements, Downtown Copy Center, B-206999.6, Dec. 6, 1982, 82-2 CPD ¶ 503, their presence can constitute a compelling reason to cancel a solicitation. The fact, however, that the terms of a solicitation are deficient in some way does not by itself constitute a compelling reason. North American Laboratories of Ohio, Inc., 58 Comp. Gen. 724 (1979), 79-2 CPD ¶ 106. A compelling reason exists only where award under the defective solicitation would prejudice other bidders or such award would not serve the government's actual needs. Twehous Excavating Co., Inc., B-208189, Jan. 17, 1983, 83-1 CPD ¶ 42.

Here, we conclude that the VA did have a compelling reason to cancel Items 1 and 3 of the solicitation. It is clear that the evaluation scheme was flawed because the use of Items 5 and 6 to allow surcharges provided no basis for allocation of the cost of out-of-city trips. Moreover, the record indicates that VA's estimates of the number of trips on Items 1 and 3 were in error by more than a factor of 2. Thus it was not possible to properly evaluate bids since the IFB did not indicate how to allocate the surcharge, and there was no assurance that any selection based on the stated estimated quantities would result in the lowest cost contract to the government.

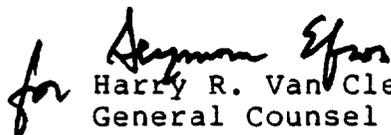
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Although it is unfortunate that the contracting officer did not perform a through analysis of the estimates at the time they were questioned by the protester and correct them prior to bid opening, the fact that the matter had been called into question prior to bid opening does not preclude cancellation after opening if the solicitation indeed proves inadequate. Ridg-U-Rak, Inc.--Reconsideration, B-207124.2, Sept. 24, 1982, 82-2 CPD ¶ 272.

On this record, moreover, we see no reason to object to VA's decision to award Items 2 and 4 to Herbert. No bids were received on these items, except from Herbert. Since the solicitation flaws outlined above concern only the manner in which an awardee was to be selected, and since the failure of others to bid left only one possible choice, VA's decision not to cancel this portion of the solicitation but to award these items to Herbert was proper. Browning-Ferris Industries of the South Atlantic, Inc.; Reliable Trash Services Co. of MD., Inc., B-217073, B-218131, Apr. 9, 1985, 85-1 CPD ¶ 406. Moreover, while Items 2 and 4 were theroretically subject to the problems which required cancellation of Items 1 and 3, Summerville could not have been prejudiced by any such defect because, as it admits, its location prevents it from meeting the 15-minute response time required for Items 2 and 4.

Since we believe VA's decision to cancel the solicitation with respect to Items 1 and 3 was legally required under the circumstances and Summerville was not prejudiced by award of Items 2 and 4, we do not need to decide Summerville's assertion that VA's actions reflect bias favoring Herbert. Moreover, although Summerville complains about a number of matters concerning prior VA solicitations for emergency services dating back to 1983 and requests an investigation of the VA's procurement practices, our Office ordinarily does not conduct investigations or audits of contracting activities under our bid protest function.

The protest is denied.

for 
Harry R. Van Cleve
General Counsel

Item No.	Schedule	Quantity	unit	Summerville		herbert	
				Unit Price	Amount	Unit Price	Amount
1.	Day Rates, 45-minute response time entirely within the city limits.	1,500	per trip	\$42.45	\$63,675	\$40	\$60,000
2.	Day Rates, 15-minute response time entirely within the city limits.	1,000	per trip	No bid	_____	\$50	\$50,000
3.	Night Rates, 45-minute response time entirely within the city limits.	50	per trip	\$55	\$2,750	\$30	\$1,500
4.	Night Rates, 15-minute response time entirely within the city limits.	50	per trip	No bid	_____	\$60	\$3,000
5.	Day Rate per mile in addition to base fee one way only for trips in Items 1 and 2 that extend beyond the city limits.	25,000	per mile	\$1.00	\$25,000	\$1.65	\$41,250
6.	Night Rate per mile in addition to base fee one way only for trips in Items 3 and 4 that extend beyond the city limits.	2,000	per mile	\$1.60	\$ 3,200	\$2.00	\$4,000

APPENDIX

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