



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Integrity Management International, Inc.

File: B-222405.4

Date: February 26, 1987

DIGEST

1. Compelling reason exists to cancel invitation for bids (IFB) after bid opening where specifications do not adequately describe government's actual needs.
2. While issuance of certificate of competency is conclusive as to matters of responsibility, it does not require the contracting agency to make award under a defective IFB where agency reasonably decides that a compelling reason exists for canceling the IFB.
3. Protester who unsuccessfully challenges contracting agency's grounds for canceling IFB is not entitled to recover its bid preparation costs or the costs of filing and pursuing the protest, since the cancellation was proper; or costs incurred in anticipation of receiving award under the canceled IFB, since no legal basis exists for recovering such costs.

DECISION

Integrity Management International, Inc. protests the cancellation of invitation for bids (IFB) No. DAKF03-86-B-0014, issued by the Army for food services at Fort Hunter Liggett and Fort Ord, California. The protester challenges the Army's grounds for canceling the IFB and requests recovery of the costs it incurred in anticipation of receiving award under the IFB, as well as its bid preparation costs and the costs of filing and pursuing the protest. We deny the protest and the request for costs.

The IFB, issued on November 5, 1985, as a small business set-aside, called for award of a fixed-price requirements contract for full food services, including meal preparation and dining facility attendance service. From November 6 through August 20, 1986, 18 amendments to the IFB were issued. While most involved postponing the bid opening date

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and other minor revisions, at least five of the amendments made numerous substantive changes to the IFB. Amendment No. 15, for example, was issued on July 31 in response to a protest to our Office by another bidder, Luzon Services, Inc. (B-222405.2, withdrawn July 28, 1986), contending that various provisions of the IFB were defective.

Because of the delay resulting from the amendments, the basic contract period was changed from January 1 - April 30, 1986, to October 1, 1986 - April 30, 1987, with two 1-year options. Bid opening was held on September 3. Sixteen firms submitted bids ranging from \$5.6 million to \$24 million; the government estimate was \$16.2 million.

After the apparent low bidder was allowed to withdraw its bid, the protester, the second low bidder, was in line for award. Because of the difference between the protester's bid (\$9.1 million) and the government estimate (\$16.2 million), however, the contracting officer found the protester nonresponsible, concluding that the protester lacked the financial capacity to incur a potential \$7 million loss over the life of the contract. On September 26, the contracting officer sent a request to the Small Business Administration (SBA) for possible issuance of a certificate of competency (COC) for the protester. By letter dated October 24, the Army notified the protester that the IFB had been canceled. According to the Army, the contracting officer received notice from the SBA on October 27 that a COC had been granted to the protester. On November 3, the protester filed its protest with our Office.

The protester challenges the Army's grounds for the cancellation and argues that, once the SBA issued the COC, it was entitled to receive award under the IFB as the lowest responsive, responsible bidder. The protester also contends that, even if the cancellation was proper, it should be allowed to recover the costs it incurred in anticipation of receiving the contract award, as well as its bid preparation costs and the costs of filing and pursuing the protest. We find these arguments to be without merit.

Under the Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.404-1(a)(1) (1986), a contracting agency may cancel an IFB after bid opening where there is a compelling reason to do so. The use of specifications which do not adequately describe the government's actual needs generally provides a compelling reason for cancellation. FAR, 48 C.F.R. § 14.404-1(c)(1); PetroElec Construction Co., Inc., B-216932, Mar. 27, 1985, 85-1 CPD ¶ 356.

Here, the Army states that the IFB was canceled because of numerous defective provisions which either misstated the Army's needs or made it virtually impossible for the bidders to determine the Army's actual requirements. With regard to the description of the Army's needs, for example, the estimate in the IFB for the number of meals to be served was based on a 3-month period which the Army later determined was not representative of typical troop strength; the IFB also failed to provide for incorporation into the contract of the quality assurance plan referenced in one of the technical exhibits. As examples of defects in the IFB which could affect the preparation of bids, the IFB required field feeding of troops but had no provision in the bidding schedule for payment for the service, and lacked any workload data with regard to the requirement that the contractor pick up, deliver and unload food supplies. In addition, in the Army's view, the sheer number of amendments caused great difficulty in accurately tracking the revisions to the IFB.

In our view, these IFB provisions, which are representative of numerous additional defects the Army found in the IFB, together with the wide range of bids received, support the Army's conclusion that its requirements were not clearly stated in the IFB. Further, the protester does not address the defects identified by the Army, and, in fact, in its comments on the Army's report on the protest, concedes that the IFB was defective. Accordingly, we see no basis on which to question the contracting officer's conclusion that the IFB was so defective as to justify cancellation.

Since the cancellation was proper, there is no merit to the protester's contention that it was entitled to award under the IFB once the SBA issued it a COC. Even assuming, as the protester contends, that the COC was issued before the IFB was canceled,^{1/} the issuance of a COC only precludes the agency from requiring the bidder to meet any other standards of responsibility, if a contract is to be awarded; it does not compel the agency to make award under a defective solicitation. Intercomp Co., B-213059, May 22, 1984, 84-1 CPD ¶ 540, aff'd on reconsideration, B-213059.2, July 9, 1984, 84-2 CPD ¶ 21.

^{1/} The contracting officer states that the SBA letter advising of the issuance of the COC, dated October 20, was received on October 27; the IFB cancellation notice to the protester was dated October 24. The protester states that it "suspects" that the Army received the SBA letter before October 27, and that, in any event, the cancellation notice, while dated October 24, was not postmarked until October 28, after the contracting officer states that the SBA letter was received.

The protester also contends that the defects in the IFB should have been apparent to the Army much earlier in the procurement, and that, by failing to cancel the IFB sooner, the Army induced the protester to incur costs in anticipation of receiving the contract. The protester argues that it should be allowed to recover these costs, as well as its bid preparation costs and the costs of filing and pursuing the protest. We disagree.

As a preliminary matter, a contracting agency is not precluded from canceling an IFB after bid opening simply because, prior to bid opening, it failed to correct a deficiency in the IFB. Meds Marketing, Inc., B-213352, Mar. 16, 1984, 84-1 CPD ¶ 318. Since we do not find the cancellation of the IFB improper, we have no basis under our Bid Protest Regulations to allow the protester to recover either its bid preparation costs or its protest costs. 4 C.F.R. § 21.6(d) and (e) (1986); Contemporary Roofing, Inc., B-222691, June 2, 1986, 86-1 CPD ¶ 510. Finally, we know of no basis for allowing a protester to recover costs incurred in anticipation of receiving a contract award. MIMCO, Inc., B-210647.2, Dec. 27, 1983, 84-1 CPD ¶ 22.

The protest and the request for costs are denied.

for *Seymour Efron*
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General Counsel