



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Grumman Corporation
File: B-225621.2, B-225621.3
Date: May 20, 1987

DIGEST

Where solicitation requirement for a preaward test related to a small and segregable portion of the required work and restriction on subcontracting that portion of the work prevented potential bidders from competing, the contracting officer had a compelling reason to cancel the solicitation after bid opening since it is in the best interest of the government to enhance competition.

DECISION

Grumman Corporation protests the cancellation after bid opening of invitation for bids (IFB) No. D-24-S issued by the United States Government Printing Office (GPO) for datacapture, digital composition and micropublishing of Department of the Army publications. Grumman, the low bidder for part of the contract work, basically contends that there was no cogent and compelling reason for cancellation of the IFB. Grumman also protests the reissuance of the IFB and any contract award based on the resolicitation.

We deny the protests.

The IFB specifications covered the production of microfiche, including silver masters,^{1/} intermediates^{2/} and diazo

^{1/} Silver masters are first generation silver halide camera master microfiche, the original negatives of source documents or tapes.

^{2/} Intermediate microfiche are duplicates of the silver master microfiche that are used to produce diazo microfiche (third generation duplicates).

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duplicates.^{3/} Award of a requirements contract was to be made in each of two categories. Category 1 was for the production of microfiche, including diazo duplicates, from source documents (such as bound books), and packaging and shipping. Category 2 was also for microfiche, including diazo duplicates, produced from digital data generally in tape form. This category required composition, reformatting and coding of the digital data supplied by the Army to yield silver masters; the silver masters are archival quality microfiche, from which intermediate microfiche and finally diazo duplicates are produced. The IFB advised that only the production of diazo duplicates and packaging could be subcontracted. Also, the IFB required that, as part of the responsibility determination, bidders in Category 2 would have to take a preaward test related to the formatting and artwork portion of Category 2 requirements.

The IFB was mailed to 40 prospective bidders on November 17, 1986. On December 12, Automated Datatron, Inc. (ADI), protested to GPO that the Category 2 preaward test was highly technical, pertained to a small portion of the work required under that category, and effectively precluded firms that could not pass it from competing for the production portion, which represented, in terms of dollar-value, 91 percent of the work under Category 2. ADI requested that the solicitation be canceled and rewritten to allow firms to compete for individual elements of work under Category 2.

The contracting officer denied ADI's protest on December 22, stating that the preaward test was deemed necessary to determine whether a proposed awardee was capable of performing in accordance with Category 2 specifications. ADI then protested to our Office on January 9, 1987, 3 days before the bid opening date, that Category 2's test was unduly restrictive of competition. ADI contended that GPO should allow subcontracting of the small portion of work, involving format preparation and art work, which required the preaward test.

Bids were opened as scheduled on January 12. Three responsive bids were received in Category 1, including ADI's second low bid of \$115,476.29. Two responsive bids were received in Category 2. Grumman submitted the low bid of \$1,168,681.15 (\$1,145,307.52 with the application of a 2 percent discount) and Amtec Information submitted a bid of \$2,544,969.12 (\$2,494,069.74 with a 2 percent discount).

^{3/} Diazo duplicates are third generation striped duplicate diazo microfiche, produced for distribution purposes.

On February 2, GPO legal counsel advised the contracting officer that ADI's protest to our Office had merit, and recommended the cancellation and reissuance of the solicitation to allow subcontracting of either that portion of the contract up to and including the production of silver masters (the formatting and artwork portion of Category 2), or the production of the diazo duplicates, but not both. The contracting officer, in her February 13 recommendation of cancellation to GPO's Contract Review Board, stated that the revision would allow ADI to submit a bid. The contracting officer canceled the IFB upon receiving the concurrence of the Contract Review Board on February 18.

Grumman thereupon filed this protest contending that the IFB contained no provision that was restrictive of competition and even if there was such a provision, it would not constitute a cogent and compelling reason for cancellation of the solicitation after bid opening since award under the IFB would meet the government's needs and would not prejudice other bidders. Additionally, Grumman contends that the resolicitation creates the potential for an auction and would be prejudicial to the competitive system. Further, the protester maintains that the contracting officer only canceled the solicitation because of her legal counsel's advice that ADI's protest with our Office probably would be sustained, and that this does not constitute a cogent and compelling reason for cancellation.

GPO does not dispute the fact that awards under the IFB would in fact meet its needs. The agency states, however, that it has a statutory duty to maximize competition and to insure that all interested and qualified firms have an opportunity to participate in its procurements. The agency states that the IFB was canceled because the contracting officer, upon reviewing the bids received and ADI's contentions, concluded that the specifications were unduly restrictive of competition.

Although a contracting agency has broad discretion to cancel an invitation, there must be a compelling reason to do so after bid opening, because of the potential adverse impact on the competitive bidding system of cancellation after bid prices have been exposed. Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.404-1(a)(1) (1986); Tapex American Corp., B-224206, Jan. 16, 1987, 87-1 C.P.D. ¶ 63. The fact that a solicitation is defective in some way does not justify cancellation after bid opening if award under the IFB would meet the government's actual needs and there is no showing of prejudice to other bidders. Pacific Coast Utilities Service, Inc., B-220394, Feb. 11, 1986, 86-1 C.P.D. ¶ 150.

FAR, 48 C.F.R. § 14.404-1(c)(9), however, specifically permits cancellation, consistent with the compelling-reason standard, where cancellation is clearly in the government's interest, and we have recognized that a contracting officer's desire to obtain enhanced competition by relaxing a material specification constitutes a valid reason under this FAR standard. Display Sciences, Inc.--Request for Reconsideration, B-222425.2, Aug. 26, 1986, 86-2 C.P.D. ¶ 223.

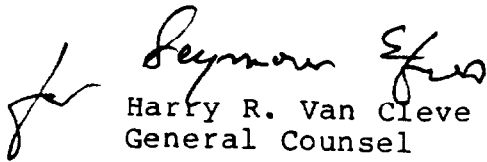
None of the three bidders under Category 1, including ADI, bid on Category 2 work. While we can only speculate as to why the other two bidders did not submit bids, we have no reason to disbelieve ADI's allegation, with which GPO evidently concurs, that the preaward test relating to the formatting and artwork portion of Category 2 requirements and the restriction on subcontracting that portion of the work prevented bidders without that expert capability from competing for most of the work under the IFB.^{4/} In view of the statutory mandate in the Competition in Contracting Act, 41 U.S.C. § 253(a)(1)(A) (Supp. III 1985), that contracting agencies obtain full and open competition, and the fact that enhancing competition is consistent with the compelling-reason standard, we find that the contracting officer's determination to cancel the solicitation was proper. Agro Construction and Supply Co., Inc., 65 Comp. Gen. 470 (1986), 86-1 C.P.D. ¶ 352. The fact that the contracting officer's determination may have been based in part on legal counsel's advice that ADI's protest had merit and was likely to be sustained by our Office does not detract from the propriety of the determination because implicit in the legal counsel's advice is his conclusion that the IFB was in fact unduly restrictive of competition.

With regard to Grumman's contention that resolicitation creates the potential for an auction, we have recognized that where, as here, cancellation is in accord with governing legal requirements, the agency has not created an

^{4/} Based on the three bids received, ranging from \$78,427.54 to \$131,284.71, it is clear that the dollar value of the work required under Category 1 was much smaller than the dollar value of the work under Category 2, where the two bids were \$1,168,681.14 and \$2,544,969.12.

impermissible auction. Emerson Electric Co., B-221827.2,
June 4, 1986, 86-1 C.P.D. ¶ 521.

The protests are denied.


Harry R. Van Cleave
General Counsel