

Hutchinson - PL



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: American Service Technology Incorporated

File: B-228881

Date: November 3, 1987

DIGEST

An invitation for bids may only be canceled after bid opening and the exposure of bids when a compelling reason exists for doing so. Failure of a housing maintenance and repair services IFB to mention that some of the housing units covered by the schedule of work will be demolished does not provide such a compelling reason where any impact of the demolition on the maintenance and repair schedule of work will be minimal and award under the IFB will meet the government's actual needs without prejudice to other bidders.

DECISION

American Service Technology Incorporated (ASTI) protests the proposed award of a contract under invitation for bids (IFB) No. N62477-87-B-3139, issued by the Department of the Navy, Naval Air Station, Patuxent River, Maryland, for housing maintenance and repair services for approximately 911 housing units divided among 9 sites including St. Mary's Gardens in Lexington Park, Maryland. The IFB contemplated award of a combination fixed price lump sum/indefinite quantity contract. The base term of the contract was 12 months, with an option to extend for an additional 1 to 12 months, which also would include a similar option, for a total contract duration not to exceed 36 months.

ASTI alleges that a compelling reason exists to cancel the IFB because no mention was made in the solicitation of the impending demolition of approximately 84 of the housing units which were covered by the solicitation's schedule of work. ASTI requests that the IFB be canceled and reissued with pertinent information about the proposed demolition.

We deny the protest.

The Navy issued the IFB for maintenance and repair services on July 13, 1987, resulting in 10 bids which were opened on August 17, 1987. Bid prices ranged from a low of \$724,990 to a high of \$1,764,016.70. ASTI, the incumbent contractor, was fourth low bidder at \$944,353. The government estimate was \$1,081,621.

On July 28, 1987, a synopsis was published in the Commerce Business Daily (CBD) announcing the intention of the Chesapeake Division, Naval Facilities Engineering Command, to issue a solicitation to procure services for the demolition of housing units. The CBD synopsis did not indicate the number or location of the housing units to be demolished. The demolition solicitation was issued on August 21, 1987, 4 days after bid opening under the maintenance and repair IFB, and covered 84 housing units on Officers Court in St. Mary's Gardens. The contracting officer reports that the demolition solicitation called for performance to commence April 15, 1988, and to be completed within 330 days of that date. According to a copy of a memorandum signed by the Commanding Officer of the Naval Air Station and provided us by ASTI, new assignments to these 84 housing units have stopped and those remaining tenants, in approximately 64 of the units, are to be relocated by March 1988. No award has been made under either the maintenance or demolition solicitation.

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. See Federal Acquisition Regulation, 48 C.F.R. § 14.404-1(a)(1) (1986). 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.

ASTI contends that the maintenance and repair IFB should be canceled because no mention of the demolition of the 84 housing units was made in the solicitation. ASTI alleges that failure to include this information in the maintenance and repair IFB caused bidders to compete on an unequal basis because some were aware of the pending demolition of the 84 units and were able to use this information to enable them to submit lower bids than they otherwise would, to the competitive disadvantage of the other bidders, including ASTI. ASTI offers no evidence to substantiate this allegation other than to point out that the three lower bidders did not attend the site visit where, according to ASTI, emphasis was placed on the high-cost expectation for

maintenance and repair of the 84 units now scheduled for demolition under the later IFB.

The Navy contends that the government's actual needs will be met by award under the maintenance and repair IFB as issued. The Navy argues that since the 64 units still occupied (out of the 84 slated for demolition) require maintenance and repair until the tenants vacate, which will not be completed until sometime in March 1988 and several months into the maintenance and repair contract base period, any impact on the scope of work called for under the maintenance and repair IFB will be minimal.

We agree with the Navy. Out of approximately 911 total units, the demolition solicitation covers only 84 of those units, 64 of which are still occupied and will continue to be occupied until sometime before the end of March 1988. Furthermore, by including an indefinite quantity portion in the IFB schedule of work, the Navy indicated to bidders that it was unable to forecast its precise needs and that the quantity of work called for would vary somewhat. In addition, the Navy's own total price estimate was well within the range of bid prices received, indicating that award to the apparent low bidder under the IFB will meet the Navy's actual needs. Although ASTI and Stay, Inc., the sixth low bidder and an interested party, claim that they would have bid differently had they known of the pending demolition, they do not show how their bids would be affected by the demolition of the 84 units. Also, the record does not establish that the other bidders had such knowledge and were able to use it to their competitive advantage. ASTI's allegation that the bidders were prejudiced and failed to bid on a common basis because the IFB failed to mention the future demolition of the 84 units is, therefore, unsubstantiated and is rejected as mere speculation.

Although it is not clear why potential bidders on the maintenance contract could not have been made aware by the Navy of the proposed demolition of the St. Mary's Gardens units, we do not find that there is a compelling reason to

cancel the IFB after bid opening, since award under the IFB will meet the Navy's actual needs without prejudice to other bidders.

The protest is denied.

 James F. Hinchman
General Counsel