



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Hebco, Inc.

File: B-228394

Date: December 8, 1987

DIGEST

An agency has a compelling reason to cancel an invitation for bids where the specifications were inadequate and no longer reflected the agency's minimum needs.

DECISION

Hebco, Inc. protests the cancellation of invitation for bids (IFB) No. DABT39-87-B-0110, issued by the Department of the Army for word processing services at Fort Sill, Oklahoma.

We deny the protest.

The Army received 13 bids at the September 14, 1987, bid opening. During the evaluation of the bids, the Army states that it discovered that the specifications were inadequate in several respects and did not reflect the government's needs. For example, the agency says that the IFB did not require that the contractor provide centralized memory storage and data sharing needed so that operators will be able to access parts of master documents in the centralized memory and add them to other documents without rekeying the entire document. Further, the agency notes that the solicitation did not specify that certain types of classified documents needed to be processed in a particular building and that the minimum salient characteristics of the equipment to be supplied by the contractor were not specified. Based mainly on these considerations, the Army determined that the solicitation should be canceled and the requirement resolicited using amended specifications. As further reason for canceling, the Army also states that it had discovered after bid opening that it will have a need for additional word processing services which will be incorporated into any new solicitation.

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For each of these cited deficiencies, Hebco does not argue that the solicitation clearly set forth the requirement or that the requirement was not a legitimate expression of the agency's needs. Instead, it is the protester's position that based on its experience and observations during the site visit its bid was calculated based on a system that would in fact meet all the Army's requirements including those cited by the agency as justifying the cancellation. It also argues that any additional requirements could easily be added to the contract by a modification.

Because of the potential adverse impact on the competitive bidding system of cancellation after bid prices have been exposed, a contracting officer must have a compelling reason to cancel an IFB after bid opening. Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.404-1(a)(1) (1987); Pneumatrek, Inc., B-225136, Feb. 24, 1987, 87-1 CPD ¶ 202. Contracting officials have broad discretion to decide whether or not compelling circumstances for cancellation exist and our Office's review is limited to determining whether the exercise of discretion is reasonable. Phillip C. Clarke Electrical Contractor, Inc., B-226506 et al., June 25, 1987, 87-1 CPD ¶ 629. The failure of a solicitation to set forth specifications adequate to meet the agency's minimum needs constitutes a compelling reason to cancel. Snow White Cleaners and Linen Supply, Inc., B-225636, Mar. 26, 1987, 87-1 CPD ¶ 347. However, the use of deficient specifications is not sufficient justification where an award under the solicitation as issued would serve the actual needs of the government and would not prejudice the other bidders. Westinghouse Electric Corp., B-217455, Aug. 30, 1985, 85-2 CPD ¶ 251.

Basically, it is Hebco's position that its bid meets the Army's requirements, despite the deficient specifications. Even if that were true, we believe there is a reasonable basis for the cancellation. Specifications must be sufficiently definite and free from ambiguity so as to permit competition on a common basis. Westinghouse Electric Corp., B-217455, supra. Because the specifications here, for example, did not specify that the contractor must supply centralized memory storage and perform the processing of certain documents at a specific location, they were not sufficient to permit the preparation and evaluation of the bids on a common basis and, therefore, award to Hebco would prejudice the other bidders. Moreover, if award were made to Hebco, the Army would not be assured that its needs were being met at the lowest price. Clarification of the minimum characteristics of the contractor supplied equipment, for instance, reasonably could have resulted in lower bids from the other bidders. In sum, we find that the particular

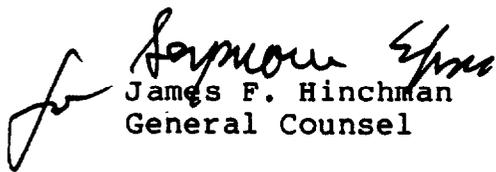
specification deficiencies cited above provide a sufficient justification for cancellation of the IFB.

Further, the Army states that after bid opening, it discovered that its word processing needs would expand and the required "turnaround" time of some of these new requirements would have to be tightened. Changing the requirements of a procurement after bid opening to properly express the agency's needs generally constitutes a compelling reason for cancellation. American Television Systems, B-220087.3, June 19, 1986, 86-1 CPD ¶ 562. The Army alleges that the additions and changes significantly impact pricing and performance. We reviewed the additions and changes in camera because the Army was concerned that premature disclosure to Hebco would give Hebco an unfair competitive advantage upon resolicitation. We conclude that the Army's changed needs provide an additional justification for canceling the IFB.

Hebco also alleges that the solicitation should have been canceled prior to bid opening and that to cancel the solicitation now after the bids have been made public improperly places Hebco at a competitive disadvantage. The Army states it did not discover that the specifications were defective until after bid opening during the evaluation of the bids. Even if Hebco is placed at some disadvantage, a contracting agency is not precluded from canceling an IFB after bid opening because it failed to correct a deficiency in the IFB prior to bid opening. Integrity Management International, Inc., B-222405.4, Feb. 26, 1987, 87-1 CPD ¶ 220.

Finally, Hebco complains about conversations which allegedly took place between an "outside" agency and the procuring agency at the public bid opening concerning whether the "outside" agency had been consulted concerning the procurement. The agency states that in fact representatives of both the requiring and the contracting activity were present at bid opening, but denies that any such conversations took place. Moreover, there is nothing improper in one activity considering views of another activity with an interest in the procurement.

The protest is denied.


James F. Hinchman
General Counsel