The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Independent Gas Producers, Corporation

File: B-229487

Date: March 2, 1988

DIGEST

Cancellation after bids have been opened and prices exposed is proper where solicitation does not allow for evaluation of natural gas transportation, a factor the agency concludes, after bid opening, is necessary to determine bid representing the lowest total cost to the government.

DECISION

Independent Gas Producers Corporation (IGP), protests the cancellation, after bid opening, of one contract line item of Department of Energy invitation for bids (IFB) No. DE-FB04-86AL33228, which solicited bids to supply natural gas over a 5-year period to the Los Alamos National Laboratory. IGP contends that Energy lacked a compelling reason to cancel the line item in question and therefore seeks award under this item as the low responsive bidder.

We deny the protest.

The solicitation specified that delivery of the natural gas would be acceptable at any point along an Energy-owned, but independently operated, transmission pipeline running from Kutz Canyon, New Mexico to Los Alamos, New Mexico. Under this scheme, those gas transportation costs incurred during shipment of the gas from the field to the Energy pipeline would be borne by the gas supplier, while Energy would pay the operating company for transporting the gas through its own pipeline to the Los Alamos facility. Energy settled on this scheme because it anticipated that potential offerors would obtain their gas from a field near the terminus of the Energy pipeline and build their own connecting pipelines to deliver the gas from the field into the Energy pipeline; indeed, this was the approach proposed by IGP. Energy assumed that this delivery approach would result in the government incurring the same transportation charges

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regardless of the firm awarded the contract,1/ and hence did not provide for evaluation of these transportation costs in selecting the low bidder.

After bid opening, however, Energy discovered that one competitor, Union Natural Gas Company, proposed to supply gas from a different gas field and, instead of building its own connecting pipeline, proposed to transport the gas to the Energy pipeline through existing interstate pipelines (controlled by the same firm operating the Energy pipeline). Under this method of delivery, the government would not have to pay for transporting the gas from point of delivery (i.e., the terminus of the Energy pipeline) to the Los Alamos facility; under state regulation, since the firm operating the Energy pipeline already would have been paid for transporting the gas through the interstate pipelines it controls, it would not be entitled to additional payment for transporting the gas through the Energy segment of the pipeline system. Thus, although Union's bid, on its face, was not low, Energy realized that, with transportation costs included, it would have been low.

Energy originally had considered and rejected as remote the possibility that bids based on this transportation method would be submitted. Based on consideration of the bid using the different transportation method, however, Energy now concluded that the only way to compare the true total costs of the various bids and make award at the lowest cost to the government would be to add transportation costs Energy would incur for each separate bid. Since the solicitation did not provide for the evaluation of transportation costs, Energy cancelled the line item in question.

IGP recognizes that the solicitation did not provide for evaluation of transportation costs, but maintains that the critical question here is whether the contracting activity originally considered this cost factor in deciding on what basis to solicit bids. IGP states that Energy, prior to the IFB's issuance, did consider how the costs of transporting gas to the Los Alamos facility should be handled and determined based on the reasoning explained above, that such costs should not be evaluated. IGP asserts that, once Energy so decided, it was estopped from reconsidering this determination, and was prohibited from cancelling the solicitation on this basis. We disagree with IGP.

1/The firm operating Energy's pipeline uses a "postage stamp" method of pricing gas transportation under which the same price is charged whether the gas is shipped a short or long distance.

In order to preserve the integrity of the sealed bidding system, the Federal Acquisition Regulation (FAR) requires that after bids have been opened and prices exposed, award be made to the lowest responsible bidder unless there is a "compelling reason to reject all bids and cancel the invitation." FAR § 14.404-1(a)(1). At the same time, however, the determination as to whether such a compelling reason exists is an administrative one that we will not disturb absent a showing that it was unreasonable. Alden Electronics, Inc.--Reconsideration, B-224160.2, et al., Mar. 12, 1987, 87-1 CPD ¶ 277. No such showing has been made here.

The FAR permits cancellation where the contracting officer determines that the IFB does not provide for consideration of all factors of cost to the government. FAR § 14.4041(c)(4). Further, we have specifically held that cancellation is warranted when, based on bids received, the agency determines that a different procurement approach would result in bid prices more advantageous to the government. Cancellation on such a basis is consistent with FAR § 14.404(c)(9), which provides for post-bid opening cancellation when circumstances dictate that such action clearly is in the public's interest. Alden Electronics, Inc.--Reconsideration B-224160.2, et al., supra.

The circumstances here satisfy both standards: by initially electing not to include a transportation evaluation factor in the IFB, Energy precluded the consideration, during bid evaluation, of a significant cost factor that, as demonstrated by the bids received, could be determinative of the true lowest cost to the government. Indeed, the record confirms that if the transportation costs were considered, IGP would have been displaced as the low bidder by Union based on Union's proposal to deliver gas to the Energy pipeline through existing pipelines.

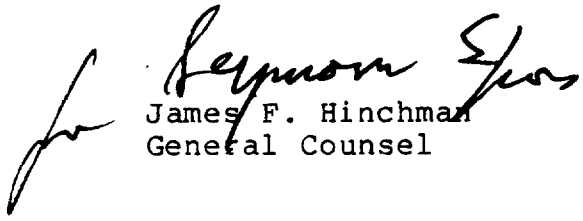
Although IGP would have us rule otherwise, the fact that the agency actually considered the feasibility of the alternative gas transport method prior to issuing the IFB does not preclude cancellation for related reasons after bid opening. It long has been our position that information relating to whether there is sufficient reason to cancel a solicitation can be considered no matter when the information justifying the cancellation first surfaced or should have become known. See Ford Aerospace and Communications Corp., et al., B-224421.2 et al., Nov. 18, 1986, 86-2 CPD ¶ 582. The record shows that Energy initially decided against evaluating transportation due to faulty assumptions that led it to assume--incorrectly, as it turns out--that bidders could not competitively bid to transport gas through

existing pipelines. When the agency realized after bid opening that its initial conclusion was wrong, it was not precluded from cancelling the IFB to correct its original error.

IGP also maintains that the absence of a transportation cost factor from the IFB would cause no harm to the government, since Union's bid based on using existing pipelines ultimately was withdrawn and thus no longer is valid. This argument is without merit. The cancellation here is justified, not because Union's bid would be more beneficial to the government, but because, as confirmed by receipt of that bid, Energy realized that, without evaluation of transportation costs, it would not receive the lowest possible cost for the services requested and bidders may have been discouraged from competing on the most cost-effective basis. The invalidity of Union's bid therefore is irrelevant. See generally, Pride Container Corp., B-224678, et al., Jan. 16, 1987, 87-1 CPD ¶ 66.

IGP requests reimbursement of its costs of competing and pursuing its protest. As we have found the agency's actions proper, however, these costs are not recoverable. See Bid Protest Regulations, 4 C.F.R. § 21.6(d) (1987).

The protest is denied.



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