



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: American Technical Communications

File: B-230827

Date: July 15, 1988

DIGEST

Agency had a compelling reason to cancel a solicitation where the solicitation incorrectly overstated the agency's needs by 566 percent due to an error in requirements.

DECISION

American Technical Communications (ATC), protests the cancellation by the Department of the Navy of invitation for bids (IFB) No. N67850-88-B-0030, for telephone cable and related items. The solicitation was canceled when the Navy discovered a substantial error in the length of cable it needed, reducing the total quantity from the 13 miles specified in the solicitation to 13,000 feet. The protester argues that the lesser quantity should be purchased from it under the original solicitation or that it should be granted its protest and bid preparation costs.

We deny the protest and the claim for costs.

The solicitation, issued February 1, 1988, requested both unit and total price bids for 10 miles of 200 pair 22 AWG cable and 3 miles of 400 pair 22 AWG cable plus other related items. ATC submitted a bid with a unit price of \$13,939.53 per mile for the 200 pair cable and \$27,939.73 per mile for the 400 pair cable for a total bid of \$225,011.93. No other bids were received by the Navy. In view of the significant discrepancy between ATC's bid price and the government estimate (566 percent) the contracting officer asked ATC to verify its bid price by letter dated March 15. Subsequently on March 16, the contracting activity learned from the requiring activity that a substantial error had been made concerning the quantity of cable needed. In fact the Navy needed 10,000 feet of 200 pair cable and 3,000 feet of 400 pair cable. During this period, the Navy also conducted an analysis of ATC's unit prices and concluded that ATC's prices were significantly higher--at least 28 percent--than other major suppliers' catalog prices

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for these types of cable. By letter dated March 17, the agency informed ATC of the cancellation citing changes in the quantity and in the specifications as the causes.

ATC argues that since the solicitation incorporated the clause at Federal Acquisition Regulation (FAR) § 52.214-10, which permits the award under a solicitation of lesser quantities than those solicited at the price bid, the solicitation should not have been canceled but award of the lesser quantities made to it. The Navy contends that the disparity between the actual needs and the error in the solicitation was so great as to change the nature of the items being purchased. Therefore, the Navy asserts that the cancellation was proper.

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. FAR § 14.404-1(a)(1) (1987). 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. Hebco, Inc., B-228394, Dec. 8, 1987, 87-2 CPD ¶ 565. It is incumbent upon the protester to establish that the contracting officer abused this discretion. The W.H. Smith Hardware Co., B-228127, Dec. 7, 1987, 87-2 CPD ¶ 556.

Where estimates in a solicitation are found to be other than a reasonably accurate representation of actual anticipated requirements, cancellation is required to preclude the possibility of an award that will not result in the lowest cost to the government and to provide bidders an opportunity to structure their bids on a more realistic representation of anticipated needs. Id.

In this case, the Navy had a reasonable basis for canceling the solicitation. The magnitude of the quantity error (approximately 566 percent) was so great that the essential nature of the procurement has been altered and the unit prices likely would be no longer meaningful.

Moreover, the regulations specifically provide that a solicitation may be canceled after bid opening if, as here, only one bid is received and the agency cannot determine that the price is reasonable. FAR § 14.404-1(c)(6). A determination that a bid price is not reasonable involves broad discretion on the part of the contracting officer, and we generally will not disturb it absent a showing of fraud or bad faith. Trebor Industries, Inc., B-228906, Nov. 4, 1987, 87-2 CPD ¶ 446. In this regard, we have recognized that a determination of price reasonableness properly may be

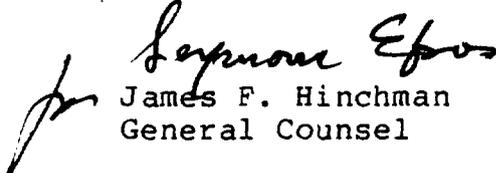
based upon comparisons with such things as government estimates, past procurement history, current market conditions, or any other relevant factors. Id.

Here, the Navy reviewed catalog prices from other vendors. The per foot price quote of ATC was as much as 29.7 percent higher. We have no basis upon which to disagree with the contracting officer's conclusion that ATC's price was unreasonable.

Consequently, under the circumstances where there was a substantial change in the quantity needed by the agency and the only bid received was determined to be unreasonably high, the cancellation was proper.

ATC also argues that it should be awarded protest and bid preparation costs. There is nothing in the record which indicates that the Navy originally issued the IFB in bad faith and we have found the subsequent cancellation to be proper. Thus, the protest is without merit and there is no basis to allow ATC to recover its protest and bid preparation costs. Bid Protest Regulations, 4 C.F.R. §§ 21.6(d), (e) (1988); Americorp, B-225667, Apr. 14, 1987, 87-1 CPD ¶ 404.

The protest and the claim for costs are denied.


James F. Hinchman
General Counsel