



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: City Wide Press, Inc.

File: B-231469

Date: August 10, 1988

DIGEST

Where pricing schedule does not reflect agency's desire for separate item prices to take advantage of economies of scale and, as a result, separate prices are not received, there is compelling reason to cancel invitation for bids after bid opening; award would not have been based upon maximum competition and most likely would not have enabled the government to obtain the required services at the lowest possible prices.

DECISION

City Wide Press, Inc., protests the cancellation after bid opening of invitation for bids (IFB) No. B-42-S, issued by the Government Printing Office (GPO) for printing, binding, and distributing folders, pamphlets, and books for the National Institutes of Health.

We deny the protest.

Since the GPO anticipated that one firm might not be able to meet all of the agency's requirements, the solicitation requested bids for two separate requirements contracts based on the number of printed items to be ordered; the "Category 1" contract would encompass quantities of 1,000 to 200,000 copies per order, while the "Category 2" contract would be for quantities of 200,001 to 1,000,000 copies per order. The solicitation permitted bidders to bid on one or both categories, included the agency's estimated requirements for each service under each category, and asked bidders to quote their prices for the designated services in a separate schedule of prices.

After bid opening, however, the GPO discovered that it had erroneously included only one price schedule in the IFB; this schedule did not provide for separate bid prices for the two categories, and did not specify whether prices entered on the schedule would apply to one or both

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categories. The agency determined that the pattern of bids it received demonstrated that this omission had made the solicitation ambiguous. Of the five firms that submitted bids, one indicated on its price schedule that it was bidding only on Category 1, another stated that it was bidding only on Category 2, and the remaining three firms, including City Wide, submitted only one schedule of prices, with no indication as to whether their bids were for Category 1, Category 2, or both. Consequently, the agency concluded that the majority of offerors were confused by the absence of separate pricing schedules for each category, and decided to cancel the original solicitation and issue a new one with separate schedules. City Wide thereupon filed this protest with our Office.

City Wide argues that the GPO had no compelling reason to cancel the original solicitation after bids were opened, and that therefore the cancellation was improper. According to the protester, since the IFB clearly stated that bids could be submitted for one or both of the categories, the agency's failure to include two copies of the schedule of prices (one for each category) was immaterial; bidders could simply indicate on the one schedule whether they were bidding for Category 1, Category 2, or both, and therefore were not prejudiced by the agency's oversight. City Wide claims that its submission of a single schedule of prices manifested a clear and unequivocal commitment to perform the required work under both categories for the same unit prices; City Wide maintains that under this interpretation, it was the low bidder for both categories under the original solicitation and that the improper cancellation of the solicitation thereby deprived it of award. City Wide further contends that resolicitation would result in an improper auction.

An agency generally may cancel an IFB after bid opening and exposure of prices only if there is a compelling reason to do so. Shetland Properties of Cook County Limited Partnership, B-225790.2, July 1, 1987, 87-2 CPD ¶ 2.1/ Whether cancellation is warranted on the basis of ambiguous or inadequate specifications is a decision for the contracting agency, whose determination will not be disturbed by our

^{1/} Although the GPO, as a legislative branch agency, is not subject to the Federal Acquisition Regulation (FAR), including the FAR requirement that an agency needs a compelling reason to cancel an IFB after bid opening, FAR § 14.404-1 (FAC 84-5), the applicable GPO Printing Procurement Regulation likewise requires a compelling reason to cancel an IFB after bid opening. See Printing Procurement Regulation, chapter IV, section 3; Custom Printing Co., B-230002, Mar. 29, 1988, 67 Comp. Gen. ____, 88-1 CPD ¶ 318.

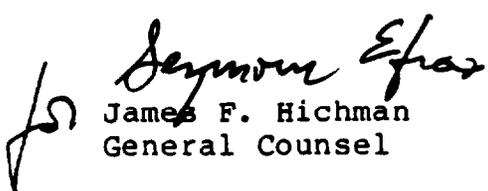
Office unless it is shown to be arbitrary, capricious, or not supported by substantial evidence. Id.

Based on the nature of the bids received, we find the GPO's decision to cancel the solicitation to be unobjectionable. The agency reasonably anticipated that the solicitation for the larger quantities under Category 2, because of economies of scale, would elicit lower-priced bids than those for Category 1, and the absence of a second schedule made it impossible to determine whether the three bidders that submitted only one price (without specifying one item) would have bid in this manner. We note that the GPO's expectation seemingly was confirmed when the agency resolicited the procurement with separate pricing schedules for the two categories; two of the three bidders that had bid a single price (not the protester) now have offered lower unit prices for Category 2 than for Category 1.

Under circumstances such as these, where the pricing schedule does not reflect the agency's desire for separate prices to take advantage of economies of scale and, as a result, separate prices are not received, we think there is a compelling reason to cancel the solicitation; the award most likely would not represent the lowest available prices for the services. See Alden Electronics, Inc.--Reconsideration, B-224160.2, et al., Mar. 12, 1987, 87-1 CPD ¶ 277. Further, as possibly indicated by bidders' offering separate Category 1 and Category 2 prices on the resolicitation, it appears the absence of separate schedules may have deterred firms from bidding on the most cost-effective basis. See Independent Gas Producers Corp., B-229487, Mar. 2, 1988, 88-1 CPD ¶ 217.

With respect to City Wide's objection that resolicitation of the procurement would result in an improper auction, we note that the statutory requirements for competition take primacy over the regulatory prohibitions against auction techniques. The Faxon Co., B-227835.3, et al., Nov. 2, 1987, 67 Comp. Gen. _____, 87-2 CPD ¶ 425.

The protest is denied.


James F. Hichman
General Counsel