



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Total Protech, Inc.

File: B-233264

Date: February 28, 1989

DIGEST

Agency decision to cancel the solicitation after bid opening is justified where agency concludes that the incumbent firm which was a major potential supplier of the services should be given an opportunity to compete.

DECISION

Total Protech, Inc. protests the cancellation of invitation for bids (IFB) No. F41685-88-B-0036, issued by the Air Force for hospital custodial services for Laughlin Air Force Base, Texas. Total Protech is the low bidder under the canceled IFB. The Air Force canceled the IFB because the incumbent, Riteway Services of San Antonio, Inc., was not provided a copy of the IFB.

We deny the protest.

The Air Force announced in the Commerce Business Daily on July 1, 1988, its intention to issue by August 10 an IFB for the hospital custodial services which were being performed temporarily in-house due to a lack of funds. The IFB, issued on August 10, solicited firm fixed-priced bids for a base year and 4 option years. The agency reports that 57 firms responded to the synopsis and sought inclusion on the bidders mailing list. By letter of July 12, Riteway requested a copy of the IFB. The Air Force explains that Riteway was not mailed a copy of the IFB, however, because the contracting officer failed to include the firm on the bidders mailing list. The solicitation contained a bid opening date of September 8.

On August 1, to meet its immediate needs and to permit adequate time for award of the 5-year contract, the Air Force solicited competition for a 1-month purchase order for these hospital custodial services from September 1 to September 30. Riteway was awarded the purchase order on August 18. A pre-performance meeting between the firm and

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the agency was held on August 25. The agency states that, at the conclusion of that meeting, Riteway expressed its intent to bid under the IFB, but did not at that time request a copy of the IFB. According to Riteway, it requested a copy of the IFB at this meeting and was "personally assured" by agency officials that it would be furnished a copy of the solicitation. Riteway has been the custodial services contractor for the base generally since February 1987.

Bid opening was held on September 8, but Riteway did not submit a bid. On September 12, after bids were opened, Riteway inquired about, and was informed of, the identity of the low bidder. Riteway then filed a protest with the Air Force on September 19 claiming that, as the incumbent of these services under the 1-month purchase order, the agency improperly excluded it from competing because Riteway was not provided a copy of the IFB, despite its two requests to the agency to do so. On October 17, the Air Force sustained Riteway's agency-level protest, canceled the IFB, and proposed resolicitation. Total Protech, which is in line for award under the canceled solicitation, filed a protest with our Office on October 19, challenging the cancellation of the IFB.

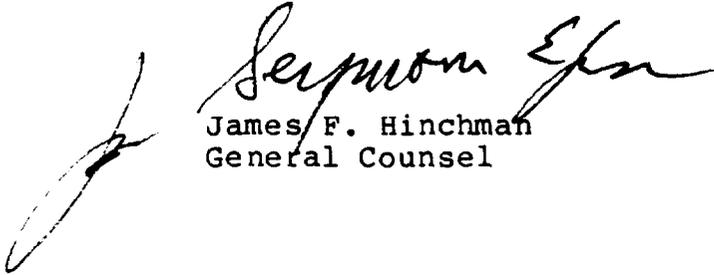
The Federal Acquisition Regulation (FAR) provides that after bid opening, award must be made to the responsible bidder with the lowest, responsive bid, unless there is a compelling reason to reject all bids and cancel the solicitation. FAR § 14.404-1(a)(1) (FAC 84-5). Whether the circumstances warrant cancellation is for the determination of the contracting officer whose decision will not be disturbed by our Office unless it was arbitrary, capricious or not supported by substantial evidence. Emerald Maintenance, Inc., B-219453.2, Dec. 10, 1985, 85-2 CPD ¶ 641. Thus, the contracting officer has broad discretion to cancel a solicitation. See generally Scott Graphics, Inc., et al., 54 Comp. Gen. 973 (1975), 75-1 CPD ¶ 302.

Here, the Air Force determined that the requirement of "full and open competition" enunciated in the Competition in Contracting Act of 1984 (CICA), 10 USC §§ 2301 (a)(1), 2302(2), 2304(a)(1)(A), and 2305(a)(1)(A)(i) (Supp. IV 1986), dictated cancellation of the IFB and resolicitation to include the incumbent. In this regard, the agency relied on our decision, Dan's Moving & Storage, Inc., B-222431, May 28, 1986, 86-1 CPD ¶ 496, in which we noted that "'[f]ull and open competition' is defined as meaning that

'all responsible sources are permitted to submit sealed bids or competitive proposals on the procurement.'" For the reasons that follow, we do not think that the agency abused its discretion in canceling the IFB.

We have recognized that an agency must take reasonable steps to ensure that solicitation materials are made available to all responsible sources. Keener Manufacturing Co., B-225435, Feb. 24, 1987, 87-1 CPD ¶ 208. Here, the record shows that Riteway had sent a letter on July 12 requesting the solicitation and that the agency failed to include Riteway on the bidders mailing list. On a second occasion on August 25, according to Riteway, the firm again requested a copy of the IFB at a meeting in which agency officials "personally assured" Riteway that the firm would be furnished a copy of the IFB. While the agency states that Riteway did not request a copy of the IFB at this meeting, the agency nevertheless concluded that Riteway should be given the opportunity to compete for this procurement. In this regard, we note that Riteway is the current incumbent contractor for custodial services for the entire base except for the hospital and is a major potential supplier of these services. Therefore, since we think that the agency has broad discretion to take corrective action in cases where there has been a failure to solicit an incumbent, we will not disturb the agency's decision.

We deny the protest.



James F. Hinchman
General Counsel