



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Cantu Services, Inc.

File: B-219998.9, B-233697

Date: March 27, 1989

DIGEST

1. Protest against Army's cancellation of a request for proposals for dining services is denied where the contracting officer reasonably determined that the solicitation should be canceled because a lack of funds required that the agency reduce its requirements by 28 percent.
2. Regulation which requires that a resolicitation of a canceled solicitation be issued to all firms originally solicited cannot be construed as requiring the size eligibility of a particular bidder to dictate whether a resolicitation is restricted to small business or not.
3. Claim for proposal preparation costs is denied where cancellation of solicitation was proper.

DECISION

Cantu Services, Inc., protests the Army's cancellation of request for proposals (RFP) No. DABT51-85-R-0025 for dining facility services at Fort Bliss, Texas, and the agency's resolicitation of the requirement under RFP No. DABT51-88-R-0187. Cantu alleges that the new solicitation is substantially the same as the original, and therefore the cancellation of the original solicitation was improper. It also claims its proposal preparation costs.

We deny the protest and the claim.

The Army issued RFP No. DABT51-85-R-0025 on July 8, 1985, as part of a cost comparison under Office of Management and Budget (OMB) Circular A-76. After conducting negotiations, requesting two rounds of best and final offers and amending the solicitation 17 times, the Army canceled the RFP on May 4, 1988, stating that budgetary constraints reduced the agency's requirements for the solicited services, and that

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these reductions were of such magnitude that a complete revision of the RFP work statement would be required.

The new solicitation, RFP No. DABT51-88-R-0187, was issued September 30. It deletes certain dining facility and attendant services contained in the original solicitation. Additionally, the new solicitation differs in that it guarantees the successful offeror award of at least a portion of the services, regardless of the outcome of the A-76 cost comparison.

The protester argues that the solicitation should not have been canceled because the new solicitation is not substantially different from the original. In this regard, the protester states that the statements of work for the two solicitations are virtually identical except for the closing of some dining facilities, the consolidation of others, and the alteration of some of the dining facilities from full food service facilities to management and food production facilities. The protester maintains that the relatively minor changes in the solicitation do not constitute the required cogent and compelling reason needed in order to justify the cancellation of a solicitation under these circumstances.

Contracting agencies have broad discretion in determining when it is appropriate to cancel a solicitation. In a negotiated procurement, such as the one here, the contracting officer need only have a reasonable basis for cancellation after receipt of proposals, as opposed to the "cogent and compelling" reason required for cancellation of a solicitation after sealed bids have been opened. Cadre Technical, Inc., et al., B-221430 et al., Mar. 14, 1986, 86-1 CPD ¶ 256. The standards differ because in sealed bidding competitive positions are publicly exposed as a result of the public opening of bids, while in negotiated procurements there is no public opening. Allied Repair Service, Inc., B-207629, Dec. 16, 1982, 82-2 CPD ¶ 541.

We do not agree with the protester's argument that the proper standard here is that normally applicable to sealed bid procurements. It may be true, as the protester argues, that responding to the original solicitation required the investment of considerable resources and that some of the offerors under the original solicitation may not be able to compete under the resolicitation. Nevertheless, these factors have nothing to do with the fact that offers were not exposed under the canceled RFP, and therefore do not constitute a basis for applying other than the normal reasonableness standard to this negotiated solicitation.

See CooperVision, Inc., B-229920.2, Mar. 23, 1988, 88-1 CPD ¶ 301.

As far as the cancellation itself is concerned, the agency states that a reduction in funding necessitated a reevaluation of its minimum needs. Accordingly, the agency reduced its dining facility and service requirements by 28 percent in the new solicitation. Additionally, we are informed that the new solicitation differs substantially from the old one in that it guarantees the successful offeror award of at least the dining facility attendant services, regardless of the outcome of the A-76 cost comparison. Under the old solicitation, if the low offeror was not successful under the A-76 cost comparison, it would be awarded no contract at all. Furthermore, the agency has discovered that two individuals who were major contributors to the creation of the government's Most Efficient Organization for the purpose of the cost comparison were also members of the Source Selection Evaluation Board (SSEB). To rectify this possible compromise, the Army states that it would have brought the solicitation review process to a halt in order to convene an entirely new SSEB.

Despite the protesters arguments to the contrary, we have often held in cases such as this that a significant change in the agency's requirements--we consider a 28 percent reduction to be significant--or even a potential for cost savings constitute legitimate grounds for canceling a negotiated solicitation. Gradwell Co., Inc., B-230986, July 7, 1988, 88-2 CPD ¶ 19; The Big Picture Co., B-224112.2, Mar. 2, 1987, 87-1 CPD ¶ 252. In this case, we think that in view of all the factors set forth above, the contracting officer exercised his discretion reasonably in deciding to cancel the RFP and to resolicit the requirement in a reduced form and under a changed format. Cantu insists, however, that considering the substantial investment made by the offerors under the original solicitation the cancellation just cannot be deemed reasonable. While it is indeed unfortunate that Cantu and other offerors may have incurred costs in pursuing the award under the original solicitation, this fact has no bearing on the propriety of the cancellation. Environmental Tectonics Corp., B-224770, Nov. 19, 1986, 86-2 CPD ¶ 591.

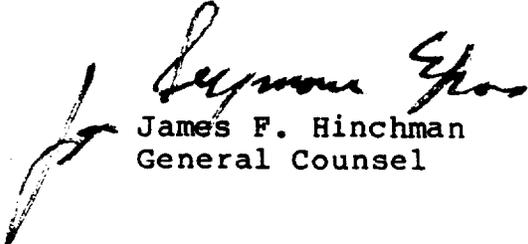
Cantu also argues that the new solicitation should not have been issued as a small business set-aside. While eligible as a small business under the original solicitation, a small business set-aside, Cantu has since lost its small

business size status because of its economic growth, and is therefore precluded from participating in the new competition. Cantu bases its argument on Federal Acquisition Regulation (FAR) § 15.606(b)(4) which requires that upon issuance of a new solicitation, "[t]he new solicitation shall be issued to all firms originally solicited" Cantu argues that because the Army was required to "issue" it a solicitation, the Army also was required to allow it to participate. In this regard, the protester states that since as a large business it cannot compete under the current solicitation, the set aside must be withdrawn and the solicitation reissued on an unrestricted basis.

The cited regulation, in our view, is intended only to require that all offerors who were originally solicited are in fact provided with a copy of the new solicitation. This regulation cannot be construed as requiring the size eligibility of a particular bidder to dictate whether a resolicitation is restricted or not. Whether a particular solicitation should be set aside for small business is governed by FAR § 19.502-2, which requires that a solicitation be set aside for small business if there is a reasonable expectation that offers will be obtained from at least two responsible small businesses at reasonable prices. The protester does not argue nor does the record show that the set-aside was inconsistent with FAR § 19.502-2.

Cantu finally argues that it should be reimbursed for its proposal preparation costs. Since we have found the cancellation proper, Cantu's claim for reimbursement of its proposal preparation costs is denied. Bid Protest Regulations, 4 C.F.R. § 21.6(d)(e) (1988); American Technical Communications, B-230827, July 15, 1988, 88-2 CPD ¶ 56.

The protest and the claim are denied.



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General Counsel