



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: JoaQuin Manufacturing Corp.
File: B-238169.2
Date: May 16, 1990

D. Bargas, for the protester.
Colonel Herman A. Peguese, Department of the Air Force, for the agency.
Barbara C. Coles, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Contracting officer properly canceled invitation for bids after bid opening and resolicited on the basis of revised specifications where original specifications overstated the government's minimum needs in some respects and, in others, failed to include certain requirements the agency deems material and necessary to meet its needs.
2. Protest that agency acted in bad faith in canceling solicitation is denied where protester asserts, but there is no evidence showing, that the agency only canceled the solicitation to render original protest challenging rejection of bid academic and, thus, to prevent General Accounting Office from issuing a decision.

DECISION

JoaQuin Manufacturing Corp. protests the cancellation of invitation for bids (IFB) No. F31610-89-B-0035, issued by the Department of the Air Force, for storage buildings. JoaQuin contends that the Air Force lacked a compelling reason to cancel the solicitation once bids were opened and that it should be awarded the contract under the IFB because it submitted the lowest responsive bid.

We deny the protest.

The IFB called for bidders to provide one acid storage building, Safety Storage M/N 22 or equal, and two hazardous waste storage buildings, Safety Storage MN/7 or equal, in accordance with the description, specifications, and

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statement of work listed in section C of the IFB. Although the Air Force received eight bids in response to the solicitation, one firm did not bid on the acid storage building requirement. Consequently, the Air Force rejected that bid as nonresponsive; the Air Force also rejected the three lowest bids as nonresponsive. Specifically, the Air Force found JoaQuin, the low bidder, nonresponsive because it failed to provide sufficient descriptive information with the bid to establish the equality of its offered products to the brand name. JoaQuin then protested the rejection to our Office.

According to the Air Force, the contracting officer discovered, upon reexamination of the solicitation in connection with JoaQuin's protest, that the specifications were inadequate in several aspects and did not reflect the government's needs. For example, the contracting officer found that the specifications for both types of buildings were silent regarding roofing requirements and, thus, did not clearly delineate the government's needs. The contracting officer also determined that the specifications contained dimension requirements that overstated the government's needs and, consequently, unduly restricted competition because, even though the specification did not allow deviation from the brand name measurements, the dimensions listed were not so critical that any deviation would be unacceptable. Based on these defects, the Air Force decided to revise the specifications to include roofing requirements and to enhance competition by substituting a generic specification, in place of the brand name measurements, requiring building measurements within a plus or minus range. After the Air Force reported these determinations to our Office, we dismissed JoaQuin's protest as academic.

JoaQuin then filed the current protest challenging the Air Force's cancellation of the IFB. JoaQuin contends that the original specifications contained in the IFB were adequate and, therefore, the contracting officer had no justification for canceling the IFB and resoliciting on the basis of revised specifications. JoaQuin contends that the fact that eight firms submitted bids in response to the IFB shows, contrary to the Air Force's suggestion, that the IFB was neither inadequate nor unduly restrictive. Accordingly, JoaQuin requests that our Office recommend that the IFB be reinstated and the Air Force award a contract to JoaQuin pursuant to the terms of the IFB.

Contracting officers have broad discretion in determining when it is appropriate to cancel an IFB. However, the preservation of the integrity of the competitive bidding

system requires the contracting officer to have a compelling reason to support the determination to cancel an IFB after bid opening. Federal Acquisition Regulation (FAR) § 14.404-1(a)(1); Southwest Marine, Inc., B-229596, B-229598, Jan. 12, 1988, 88-1 CPD ¶ 22. As a general rule, a compelling reason for cancellation exists when it is determined that an IFB overstates the minimum needs of the government or fails to express properly the agency's minimum needs. See Aero-Executive Helicopters, B-227133, Aug. 17, 1987, 87-2 CPD ¶ 167; Display Sciences, Inc.-- Request for Recon., B-222425.2, Aug. 26, 1986, 86-2 CPD ¶ 223.

We find that the agency had a compelling reason to cancel here because the IFB failed to include the salient roofing characteristics required to meet the agency's needs. Based on our review of the record, and absent any allegation or evidence from the protester showing otherwise, we conclude that, given the hazardous nature of the materials that the government plans to store in these buildings, these requirements were significant and as such should have been stated in the original IFB. In this regard, the revised IFB requires that each roof should be constructed of 12 gauge steel, coated with chemical-resistant material, and should be sloped to drain from front to rear.

Moreover, we find that cancellation was justified on the basis that the original IFB overstated the Air Force's needs regarding dimension requirements. The more restrictive dimension requirement in the original solicitation concerning the hazardous waste storage buildings--presented in the IFB as an absolute requirement--clearly could have dissuaded potential bidders from competing based on their inability to meet the requirement. In this regard, even though the Air Force received eight bids in response to the solicitation, this, by itself, does not establish, as the protester suggests, that the brand name measurements did not unduly restrict competition. Rather, a specification is unduly restrictive where it unnecessarily prevents one or more companies from competing. See Deere & Co., B-206453.2, Nov. 1, 1982, 82-2 CPD ¶ 392. Here, the Air Force determined that the restriction was clearly unnecessary because the agency did not have to have a building meeting the exact dimensions listed in the solicitation (7 feet long, 8 feet wide and 7 feet by 1/2 inch in height). As a result, the new solicitation calls for building measurements within a plus or minus range (7 feet by 6 inches - 8 feet, 0 inches long, by 8 feet, 6 inches - 9 feet, 0 inches wide, by 7 feet, 0 inches - 7 feet 6 inches high).

The Competition in Contracting Act of 1984, 10 U.S.C. § 2305(a)(1)(A) (1988), requires that solicitations be designed in a manner to achieve full and open competition and contain restrictive specifications only to the extent necessary to satisfy the contracting agency's minimum needs. Having determined that the IFB in this case overstated its minimum needs, the Air Force was justified in canceling the IFB and resoliciting on the basis of relaxed specifications that accurately reflect its minimum needs. See Control Concepts, Inc., B-233354.3, Apr. 6, 1989, 89-1 CPD ¶ 358.

JoaQuin also argues that the Air Force only canceled the solicitation as a ruse to circumvent the original protest. In this regard, JoaQuin contends that it submitted the descriptive literature required by the IFB; that its bid was responsive to the IFB; and that the agency improperly evaluated its bid.

To the extent that JoaQuin argues that the agency only canceled the solicitation as a pretext to have our Office dismiss JoaQuin's original protest, JoaQuin is inferring that the Air Force acted in bad faith, based on the fact that the decision to cancel was made after JoaQuin filed the protest with our Office. To show bad faith, a protester must submit convincing evidence that the contracting officer directed its actions with specific and malicious intent to injure the protester. Digitize, Inc., B-235206.3, Oct. 5, 1989, recon. denied, B-235206.4, Nov. 13, 1989, 89-2 CPD ¶ 453. The protester has made no such showing here.

Even though the agency decided to cancel the solicitation after JoaQuin protested, this, by itself, does not show that the decision to cancel was made only to avoid the resolution of JoaQuin's original protest, since the defects in the solicitation did not become apparent until after the agency reexamined the bids and the IFB in connection with its review of JoaQuin's protest. An agency may cancel a solicitation after bid opening no matter when the information precipitating cancellation first surfaces. Chrysler Corp., B-206943, Sept. 14, 1982, 82-2 CPD ¶ 271. Clearly, the cancellation properly was based on the agency's desire to enhance competition by eliminating the unnecessarily restrictive specifications and adding significant requirements that were not addressed in the IFB. Therefore, we have no basis to conclude, and the record does not show, that the Air Force's decision to cancel the IFB was made in bad faith.

Finally, in view of our conclusion that the IFB properly was canceled, we need not consider Joaquin's contention that the Air Force improperly found Joaquin's bid nonresponsive for failure to submit descriptive literature.

The protest is denied.



James F. Hinchman
General Counsel

