



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Printz Reinigung GmbH

File: B-241510

Date: February 8, 1991

Daniel F. Crowley, Esq., O'Haire & Fiore, for the protester.
Jack B. Patrick, Esq., Department of the Army, for the agency.
Susan K. McAuliffe, Esq., Andrew T. Pogany, Esq., and
Michael R. Golden, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

1. Contracting agency's decision to cancel a request for proposals for laundry and dry cleaning services to be provided on a contractor owned-contractor operated basis is reasonable where troop reductions and base closures rendered the quantity estimates in the solicitation invalid and where agency decided its requirements would be best met by resoliciting on the basis of government owned-contractor operated facilities due to underutilization of such facilities.
2. Protest against award of an interim contract for laundry and dry cleaning services based on limited competition to only offeror proposing a reasonable price is denied where agency reasonably determined that an urgent need for the services existed.

DECISION

Printz Reinigung GmbH protests the cancellation of request for proposals (RFP) No. DAJA37-90-R-0099, issued by the Department of the Army for contractor owned-contractor operated laundry and dry cleaning services and the operation of six government troop collection pick-up locations in Germany. The protester also challenges the award of an interim contract for these services on a government owned-contractor operated basis to PAE GmbH.

We deny the protest.

The RFP, issued on May 18, 1990, contemplated the award of a fixed-price requirements contract for dry cleaning and laundry services for Army personnel and their families, Department of Defense civilians and schools, and Morale Welfare Support Activities in the V Corps Area, Frankfurt, Germany. Services under the RFP were to begin on October 1 for a 1-year base

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period with two 1-year options. The RFP contained quantity and workload estimates and provided for six troop collection pick-up points on a fixed-price basis.^{1/} Award was to be made to the low, technically acceptable offeror.

Printz, the incumbent contractor, submitted the only proposal received by the June 18 closing date. Discussions were held with Printz in August and a best and final offer (BAFO) was requested by August 16. On August 14, Printz submitted its BAFO in which the firm took exception to recent solicitation changes and requested additional discussions with the agency.

The contracting officer received notification from the requiring activity that the RFP's quantity estimates no longer accurately reflected the agency's needs due to numerous base closures and troop reductions in the area, and that government owned-contractor operated facilities would better serve the Army's needs. The Army contemplated cancellation of the RFP, necessitating the award of an interim contract for the services while a revised RFP was prepared. On September 11, the Army requested a proposal for information purposes for the interim services from PAE which was then performing similar services at government owned-contractor operated facilities that were under utilized and operating at less than 75 percent capacity.

On September 21, the Army requested Printz to submit a price proposal to extend its services at the six locations listed in the RFP for an expected 2-month interim period. Printz responded that its proposed price for such extension would be 20 percent higher than its expiring contract because of inflation and a claimed loss of efficiency since it would be spreading fixed costs over six locations instead of the eight pick-up points it had been servicing. On September 24, the Army informed Printz that a 20 percent increase was considered unreasonable and suggested that a 5 to 7 percent increase would be considered more acceptable.^{2/} The agency requested

^{1/} The previous contract contained eight collection pick-up points.

^{2/} Although Printz contends that the agency engaged in improper auction techniques by presenting a price range it considered fair and reasonable, we do not find that the record supports the protester's contention. It is not improper for a contracting agency to disclose a price objective as a negotiation tool for reaching an agreement as to a fair and reasonable price. American Seating Co., B-230171.36, Aug. 31, 1989, 89-2 CPD ¶ 195.

Printz to respond with its best and final price by the close of business that day. Printz then offered a 15 to 17 percent price increase which the Army determined to be unreasonable. Printz was notified later on September 24 that its contract would not be extended.

Due to its urgent and compelling need for the interim services, the Army notified PAE that the work would be transferred to it for the 2-month interim period, which was later extended to 6 months to allow sufficient time to prepare a new solicitation for the requirement, since its prices were found to be fair and reasonable. The RFP was canceled on September 27 since the reduction in force and base closures occurring in Germany rendered the RFP's quantity and volume estimates invalid. The Army also anticipated resolicitation of the requirement on a government owned-contractor operated basis in order to better utilize its government owned facilities. PAE's two on-going contracts were modified on September 28 to include the six locations from the canceled RFP for a 6-month period. On October 5, Printz filed its protest with our Office.

Printz initially challenges the propriety of the agency's cancellation of the RFP. The protester suggests that award under the RFP would have been proper despite an expected reduction in quantity requirements due to base closures and troop reductions since the contractor could have proposed "a variety of prices for a variety of possible levels of services." Additionally, Printz argues that since the interim contract was awarded on the basis of the requirements stated in the RFP, a full award under the solicitation would have been proper.

In a negotiated procurement, a contracting officer need only have a reasonable basis to cancel a solicitation after receipt of proposals, as opposed to the cogent and compelling reason required for cancellation of an invitation for bids after receipt of sealed bids. Logics, Inc., B-237411, Feb. 1, 1990, 90-1 CPD ¶ 140, aff'd, B-237411.2, Apr. 25, 1990, 90-1 CPD ¶ 420. Here, the agency determined that cancellation of the RFP was justified because of its concerns about the inaccuracy of the RFP's stated workload and quantity estimates due to recent changes in the political environment in Europe and associated base closures and troop reductions. Additionally, the agency decided that the transfer to and consolidation of this RFP's requirements with services performed at government owned-contractor operated facilities would increase efficiency, competition and cost savings. As such, the agency determined that cancellation was justified and that a new solicitation incorporating the changed requirements would be prepared. The protester has failed to rebut the agency's factual basis for the cancellation.

While Printz contends that an award under the RFP could have been possible, it is nevertheless clear that the solicitation's inaccurate quantity estimates rendered the solicitation deficient. Where there is a material discrepancy between the solicitation estimates and the agency's actual anticipated needs, no award should be made based on those defective estimates. AWD Mehle GmbH, B-225579, Apr. 16, 1987, 87-1 CPD ¶ 416. In light of the agency's changed requirements and interest in increasing operation efficiency by resoliciting on a government owned-contractor operated basis, we find the agency acted reasonably in canceling the solicitation.^{3/}

Printz next contends that the interim award to PAE was improper. The protester argues that any competition for the interim award was conducted on unequal terms since PAE offered a price for extended services based upon the terms of its present contractor owned-contractor operated contract and PAE proposed a price reflecting consolidation of the short-term requirement into its government owned-contractor operated facilities.

The agency states that since the protester's contract was to expire on September 30, the imminent award of an interim contract became necessary to prevent any break in service. Printz was given the opportunity to submit a proposal to extend its contract for this period but twice offered unreasonable prices. The agency states that it did not consider Printz to be in direct competition with PAE for the interim contract, but instead explains that it awarded the contract to PAE on the basis of urgency only after the prices offered by Printz were found to be unreasonable.

The record shows that a Justification and Approval (J&A) for using other than full and open competitive procedures due to compelling urgency was approved by authorized agency officials. The authority cited for this procurement is 10 U.S.C. § 2304(c)(2) (1988), which allows the head of a procuring agency to authorize use of other than competitive procedures in awarding a contract when the agency's requirements are of such an unusual and compelling urgency that the government would be seriously injured if the agency was not permitted to limit the number of sources from which it solicits proposals.

^{3/} Since the RFP was properly canceled, the protester's various contentions regarding the agency's alleged improper actions during discussions and the evaluation of its proposal are dismissed as academic. See Morey Machinery, Inc.-- Recon., B-233793.2, Aug. 3, 1989, 89-2 CPD ¶ 102.

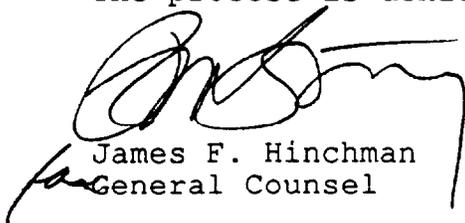
The J & A states that the only responsible source that can provide these services within the required time and at a reasonable price is PAE. The J & A stated that although Printz was solicited for the interim period, the firm proposed unreasonable prices. The document provides that a compelling urgency for the laundry and dry cleaning services exists since a failure to continue services while workload estimates were revised for resolicitation would result in "health standards not being met, the closure of critical community activities, and a decrease in the level of readiness of the forces in the V Corps region." The J & A assures that competition will be maximized upon resolicitation.

An agency using the urgency exception to the mandate set forth by the Competition in Contracting Act of 1984, 10 U.S.C. § 2304(a)(1)(A), for full and open competition may, as here, restrict the acquisition to the firms it reasonably believes can properly meet agency needs in the required time. See Allied Materials & Equip. Co., Inc., B-235585.2, Oct. 4, 1989, 89-2 CPD ¶ 302. We will object to an agency's determination to limit competition due to unusual and compelling urgency if we find that the agency's decision lacks a reasonable basis. Id.

In this case, we find that the award to PAE is not legally objectionable because the record supports the agency's position that a legitimate urgency, not created by a lack of advance procurement planning but by unexpected requirement changes, existed and that only PAE could meet the agency's minimum needs within the required time at fair and reasonable prices. Given the urgent circumstances here we find that competition was maximized to the extent practicable during the short time available to make an award for the interim services. The protester was twice invited to submit an offer to extend its current contract and twice proposed unreasonably high prices. This left PAE as the only remaining source eligible for award. Although the protester points out that it offered a price for a 3-month extension and that an award was actually made for a 6-month period, we do not find that this materially affects the propriety of the urgency-based award. Printz never indicated that its price would have been lower if the interim contract was extended beyond the initially contemplated 2 to 3-month period and the J & A supports the longer award period. Printz will also have the opportunity to

compete under the new solicitation. We therefore see no reason to question the reasonableness of the interim award to PAE.

The protest is denied.



James F. Hinchman
General Counsel