



Comptroller General
of the United States

Washington, D.C. 20548

Evans
144075

Decision

Matter of: Bayfone of Tampa d/b/a Cellular One

File: B-242925

Date: June 5, 1991

J. Randolph MacPherson, Esq., Thelen, Marrin, Johnson & Bridges, for the protester.
Gregory H. Petkoff, Esq., and Norman E. Lindsey, Esq., Department of the Air Force, for the agency.
Catherine M. Evans, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Cancellation of solicitation after bid opening was proper where solicitation was defective because evaluation did not ensure that award would be based on lowest cost to the government.

DECISION

Bayfone of Tampa d/b/a Cellular One protests the cancellation after bid opening of invitation for bids (IFB) No. F08602-91-B-0005, issued by the Department of the Air Force for network access, air time, maintenance and repair services for government-owned cellular telephones. The Air Force canceled the IFB based on its determination that the evaluation scheme was defective. Cellular One, the apparent low bidder, maintains that there was no defect in the IFB, that the cancellation therefore was improper, and that it was entitled to the award.

We deny the protest.

The IFB contemplated the award of a fixed-price requirements contract based on estimated quantities for an 8-month base period and 4 option years. For each period of the contract, the IFB instructed bidders to submit prices for several elements of cellular telephone service, including monthly access charges, which apply to each cellular telephone unit and are independent of actual telephone usage, and usage charges, which are computed based on a rate per minute for the service used. The IFB provided for two types of service--

basic and economy--and the bid schedule contained separate contract line items (CLINs) for network access for each of these two types of service. The schedule also contained separate usage charge CLINs for peak and off-peak time periods, weekends and holidays.

The bid schedule listed estimated quantities for each CLIN. For the fixed charges, such as network access for basic and economy service, the estimated quantities referred to the number of telephones that were expected to utilize each service--25 for the basic service and 75 for the economy service. For the usage charges, the estimated quantities referred to the estimated amount of time the telephone would be used. For example, line item 0001AF, for peak-period usage of basic service, contained an estimate of 80 minutes per month; line item 0001AG, off-peak usage of basic service, contained an estimate of 20 minutes per month. Bidders were instructed to multiply their unit prices by the estimated quantities to arrive at the total prices for each line item, and to add the line item prices together to arrive at the total prices for each contract period.

The Air Force received bids from Cellular One and from Mobilnet, the incumbent contractor. On initial evaluation of the bids, Cellular One appeared to be the low bidder based on the total of line item prices. However, the agency then discovered that the usage line item prices did not account for the number of telephones that would be using each type of service--25 for basic service and 75 for economy service. Therefore, in order to determine the total cost of the service to the government, the agency multiplied each bidder's usage line item prices by the number of telephones subscribing to each type of service. For example, the line items for usage of basic service during peak, off-peak, and weekend/holiday periods were multiplied by 25, and the line items for usage of economy service during those time periods were multiplied by 75. Under this evaluation scheme, GTE was low because it bid lower prices than Cellular One for the economy service line items; when Cellular One's higher prices for the economy service line items were multiplied by 75, its total price was higher than GTE's. Based on this analysis, the agency determined that the evaluation scheme reflected in the bid schedule, which showed Cellular One as the low bidder, did not insure award based on the lowest overall cost to the government, and therefore canceled the solicitation.

Cellular One argues that the agency lacked a compelling reason to cancel the IFB after bid opening because the evaluation scheme as reflected in the bid schedule is unambiguous. As an indication that GTE also did not consider the IFB ambiguous, the protester notes that GTE's prices on an interim procurement, conducted to meet the agency's needs

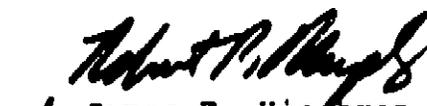
while this protest is pending, were the same as its prices under the IFB. The firm asserts that alleged agency actions (e.g., holding discussions only with GTE) in the interim procurement establish that the IFB was canceled as part of an overall pattern by the agency of treating the two offerors unequally. Cellular One concludes that it is entitled to award under the IFB because it was the low bidder based on the sum of the unit prices in the bid schedule, the evaluation scheme clearly stated in the IFB.

Although a contracting officer has broad discretion to cancel an IFB, there must be a compelling reason to do so after bid opening because of the potential adverse impact of cancellation on the competitive bidding system after bid prices have been exposed. See Federal Acquisition Regulation § 14.404-1(a)(1). However, contrary to the protester's apparent understanding, ambiguity of a bid schedule is not the only proper reason for canceling an IFB. Cancellation also is proper in other circumstances, including where an IFB evaluation scheme will not insure that award would be based on the lowest cost to the government; this renders the IFB materially deficient. Balva Fin. Corp., B-235872, Sept. 21, 1989, 89-2 CPD ¶ 263. This was the situation here.

Whether or not the evaluation scheme was clearly stated, the failure of the scheme to take into account the estimated quantities of service required for certain items resulted in evaluation of Cellular One's bid as low, even though GTE's bid would result in the actual lowest cost to the government. Accordingly, the cancellation was proper as the solicitation did not ensure that the government would receive the most advantageous price. Balva Fin. Corp., B-235872, supra. Given that this was a proper reason for canceling the IFB, there is no basis for concluding that the cancellation instead was motivated by a pro-GTE agency bias. See Canaveral Maritime, Inc., 69 Comp. Gen. 604 (1990), 90-2 CPD ¶ 41.

Cellular One argues that it has been prejudiced by the disclosure of its bidding strategy, apparent on the face of its bid, to GTE. This argument is without merit. Cellular One received a copy of GTE's bid with the agency report, and will have the opportunity to recompete on the same basis as GTE under a revised IFB. See Earthworks of Sumter, B-232067.2, Jan. 5, 1989, 89-1 CPD ¶ 9.

The protest is denied.


James F. Hinchman
General Counsel