



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: MTL Systems, Inc.

File: B-245363

Date: December 20, 1991

B.L. Nicklas for the protester.
Edward Halpern for Avionics Research Corporation of Florida,
an interested party.
Eric A. Lile, Esq., and Thomas T. Basil, Esq., Department of
the Navy, for the agency.
Barbara C. Coles, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

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

DECISION

MTL Systems, Inc. protests the cancellation after bid opening of invitation for bids (IFB) No. N61339-91-B-0005, issued by the Department of the Navy for artwork rendering and presentation materials. The Navy canceled the IFB based in part on its determination that the solicitation's evaluation scheme was defective. Among other things, MTL contends that it was the low bidder and that the cancellation was improper because the existence of an ambiguous evaluation scheme in the IFB was not a compelling reason to cancel the solicitation.

We dismiss the protest because it fails to state a valid basis for protest. See 4 C.F.R. § 21.3(m) (1991).

The IFB, issued on June 6, 1991, contemplated the award of an indefinite quantity, firm, fixed-price contract for a 1-year base period and 4 option years. For each period of the contract, the IFB instructed each bidder to submit prices for an estimated quantity of various supplies and/or services and to submit the total price of these "less accelerated amount." Below each list of these items, the bid schedule contained another line item (e.g., line item No. 0010 was for the base year and line item Nos. 0020, 0030, 0040, and 0050 for the respective option years that followed) where the bidder was requested to insert a "unit

price adjustment for accelerated delivery." Unlike the other line items, the IFB did not contain an estimated quantity for the accelerated delivery line items; instead, the solicitation provided "as req."¹ The IFB provided that award would be made to the low bidder but did not specify whether evaluation would include or exclude the unit price adjustment for accelerated delivery.

The Navy received five timely bids at the July 6 bid opening. After bid opening, the contracting officer canceled the solicitation because, among other things, the IFB did not state how the acceleration rate would be evaluated. MTL's protest to our Office challenging the cancellation followed.

MTL contends that the agency's post-bid opening cancellation based on the presence of an ambiguous evaluation scheme in the solicitation was improper. In this regard, the protester alleges that since the contracting officer was aware of this ambiguity prior to bid opening, his decision to cancel the solicitation after bid opening was untimely made and demonstrates the insignificance of the ambiguity.

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); Alliance Props., Inc., 64 Comp. Gen. 854 (1985), 85-2 CPD ¶ 299. Cancellation is proper generally where an IFB is ambiguous, see Source AV, Inc., B-238017, Mar. 27, 1990, 90-1 CPD ¶ 336; where an IFB evaluation scheme will not ensure that award would be based on the lowest cost to the government, see Bayfone of Tampa d/b/a Cellular One, B-242925, June 5, 1991, 91-1 CPD ¶ 535; and where the solicitation does not contain the agency's best estimate of what will be required. See R.P. Densen Contractors, Inc., 66 Comp. Gen. 31 (1986), 86-2 CPD ¶ 401.

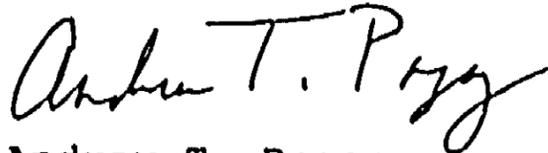
Here, the solicitation required each bidder to submit fixed unit prices for each line item and then required the bidder to submit a unit price adjustment factor for all items to include the cost of accelerated delivery. However, as

¹Section H of the solicitation provided the following:

"[t]he government anticipates that certain items will be ordered which will require an accelerated delivery. When an accelerated delivery period of less than 72 hours . . . is authorized, the [c]ontractor shall be entitled to an additional percentage of the unit price(s) involved in the amount specified in section B."

stated above, the solicitation did not provide an estimated quantity of the number of items or the frequency of instances where accelerated delivery would be required. Instead, the IFB merely stated "as req." In fact, the agency states that under the prior contract, approximately one-third of the delivery orders issued for all items involved accelerated delivery. Bids (unit price adjustments) received here for accelerated delivery ranged from 0 to 50 percent of the base bid (base prices for the non-accelerated delivery line items). Indeed, application of the full acceleration percentage factor that the protester bid (35 percent) to its base bid would render its bid other than low. Thus, in our view, omission of an estimated quantity for accelerated delivery and the IFB's failure to state whether the evaluation would include or exclude the accelerated delivery factor rendered the solicitation clearly defective. We therefore find the cancellation proper.

The protest is dismissed.



Andrew T. Pogany
Acting Assistant General Counsel