

1461275 J



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Rogers Machine and Engineering

File: B-245869.2

Date: March 12, 1992

Chris A. Hirlinger for the protester,
Lt. Col. William H. Spindle, Department of the Air Force,
for the agency.
Aldo A. Benejam, Esq., and Andrew T. Pogany, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Contracting agency had a compelling reason to cancel invitation for bids (IFB) after bid opening where it reasonably determined as a result of a pre-award survey that IFB requirements related to minimum manning level for transient aircraft services were ambiguous.

DECISION

Rogers Machine and Engineering protests the Department of the Air Force's decision to cancel after bid opening invitation for bids (IFB) No. F22600-91-B-0090, for transient aircraft services at Keesler Air Force Base, Biloxi, Mississippi. The protester contends that the agency's decision to cancel the IFB and resolicit the requirement was improper.

We deny the protest.

The IFB, issued on July 25, 1991, as a total small business set-aside, required bidders to submit prices for all personnel, equipment, tools, materials, supervision, and other items and services necessary to provide the services in accordance with the IFB's performance work statement.¹ The agency received six bids by the September 13 extended bid opening date; Rogers submitted the apparent low bid. Following bid opening, the agency conducted a pre-award survey of the protester, which included a request that

¹The IFB required services to be provided from 7:00 a.m. to 11:00 p.m., 7 days per week, including holidays; hereinafter referred to as normal hours of operation.

Rogers submit a chart showing its manning schedule. A review of the chart Rogers submitted revealed that between 7:00 and 8:00 a.m., and between 5:00 and 11:00 p.m., week-days, the protester scheduled only one employee; Rogers scheduled two employees during the weekend normal hours of operation.

During a pre-award meeting held on October 15, in which the protester participated, the agency pointed out that the IFB called for two employees during all normal hours of operation 7 days per week, instead of only one employee during certain morning and evening hours as Rogers indicated in its chart. The agency also noted that the IFB called for an additional employee to perform limited job control functions on weekends, for a total of three employees during the weekend, not two, as shown on Rogers's manning chart.

The agency states that Rogers indicated during the pre-award meeting that it had interpreted the IFB as requiring two employees from 7:00 a.m. to 11:00 p.m. only on weekends; that its bid did not allow for a third person on weekends; and that Rogers estimated that the additional manning would require an approximate \$25,000 adjustment to its bid price. Given that the protester and the agency interpreted the IFB's manning requirement differently, the agency ended the pre-award meeting with the protester by explaining that the IFB's manning requirement would be reviewed to determine whether it was ambiguous or whether it accurately reflected the agency's minimum needs.

Subsequently, on October 25, the agency's requiring activity made it clear to the contracting officer that it needed a minimum of two employees during all normal operating hours, 7 days per week, excluding holidays. The requiring activity also informed the contracting officer that it had determined to perform the weekend job control functions in-house, thereby eliminating any confusion regarding the need for a third employee on weekends. The agency's requiring activity explains that its 2-employee minimum requirement on weekdays and weekends is based upon the performance history of the contract. According to the agency, having only one employee on the flight line during early weekday morning and evening hours as Rogers scheduled, would result in hazardous working conditions and unacceptable disruption to services.

The contracting officer then reviewed the applicable IFB provisions and determined that, rather than clearly calling for two employees during all normal operating hours, 7 days per week, as actually required by the agency, the IFB may have improperly led bidders to conclude, as Rogers indicated, that the minimum 2-employee requirement applied only to weekends. Accordingly, on November 14, the agency

issued amendment No. 0003 canceling the IFB as ambiguous. This protest followed.

The protester contends that the agency's decision to cancel the IFB and resolicit the requirement is arbitrary and lacks a compelling basis because the IFB was not ambiguous. The protester essentially argues that the IFB clearly contains a 2-employee minimum manning requirement only for weekends; that in developing the manning chart it provided to the agency, Rogers considered historical workload data; and implies that its manning chart, which provides for less than two employees during all normal operating hours on weekdays, reflects the same manning levels successfully used in the past. Rogers further asserts that it is "prepared and committed" to perform the contract under the terms of the canceled IFB.

Federal Acquisition Regulation (FAR) § 14.404-1(a) permits cancellation of IFB after bid opening only when there is a compelling reason to do so. Inadequate or ambiguous specifications cited in the IFB may constitute such a compelling reason. FAR § 14.404-1(c)(1). An ambiguity exists if a solicitation requirement is susceptible to more than one reasonable interpretation when read in the context of the solicitation as a whole. Energy Maintenance Corp., B-223328, Aug. 27, 1986, 86-2 CPD ¶ 234. We generally regard cancellation after bid opening to be appropriate when an award under the solicitation would not serve the actual minimum needs of the government or when other bidders would be prejudiced by such an award. Source AV, Inc., B-238017, Mar. 27, 1990, 90-1 CPD ¶ 336. Here, we agree with the agency that the IFB was sufficiently ambiguous to warrant canceling the solicitation and resoliciting the requirement.

Paragraph No. 1.6.1 in section C-1 of the IFB required the contractor to provide the required services during "normal hours" defined as 7:00 a.m. to 11:00 p.m., 7 days a week, including holidays. In a different section of the IFB, section C-5, paragraph No. 5.2.15 required the contractor to "ensure that adequate personnel are available to accomplish all arrival, processing, and departure services within the specified time frames," but did not specify what personnel would be considered adequate. The next paragraph in that section, No. 5.2.16, stated that "[d]uring weekends Transient Aircraft Services shall perform limited Job Control duties" (emphasis added), including the following requirement:

"Due to the unpredictable workload size of transient aircraft, arrivals/departures, there shall be at a minimum (2) aircraft attendants/servicers on station during normal duty hours."

While the agency apparently intended for this provision to inform bidders that it required at least two employees during all normal operating hours as defined in paragraph No. 1.6.1 of the IFB--i.e., a minimum of two employees at all times between 7:00 a.m. and 11:00 p.m., including weekdays and weekends--its wording and location in the IFB, in our view, could have been misleading. As the provision establishing the 2-employee minimum appeared under paragraph No. 5.2.16 which concerned weekend duties, and the IFB contained no other provision establishing a weekday manning requirement, it could have reasonably misled bidders to conclude that it was applicable to weekends only. On the other hand, given the reference to "normal duty hours," bidders could have reasonably interpreted the provision as applicable to all normal operating hours, weekdays and weekends included, as the agency intended.

In cases such as this, where a solicitation requirement is unclear, and some bidders interpreted the requirement in a way other than intended by the agency, the solicitation properly is regarded as defective and cancellation is appropriate since the competition would not have been conducted on an equal basis and the agency's needs would not necessarily be met. See, e.g., Brener Bldg. Maintenance Co., Inc., B-235370.2, Sept. 20, 1989, 89-2 CPD ¶ 251. The Air Force's decision to cancel the IFB, clarify its personnel requirement, and reissue the IFB is therefore proper.²

The protest is denied.


James F. Hinchman
General Counsel

²In the reissued IFB, the agency deleted the additional weekend job control functions, and included the following provision clarifying the minimum manning level:

"5.2.16. Due to the unpredictable workload size of Transient Aircraft arrivals/departures, there shall be a minimum of two (2) transient aircraft attendants/ servicers during normal duty hours (0700--2300 hrs.) [7] days per week. During holidays a minimum of one aircraft attendant/ servicer during normal duty hours shall be acceptable."