



Decision

Matter of: FRC International, Inc.

File: B-260078

Date: April 10, 1995

J. D. Dunne for the protester.
Benjamin G. Perkins, Esq., Defense Logistics Agency, for the agency.
Wm. David Hasfurther, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Resolicitation of a procurement is reasonable where the agency determines that a resolicitation will result in additional competition and, therefore, the possibility of reduced prices.

DECISION

FRC International, Inc. protests the issuance of an amendment reopening request for proposals (RFP) No. SP0450-94-R-3617 to firms that had not already submitted proposals under the original RFP, which was issued by the Defense General Supply Center (DGSC), Defense Logistics Agency, for the procurement of two types of Halon 1301, a fire-extinguishing substance. According to FRC, the changes made in the amendment are not of the magnitude that would permit the RFP to be canceled and reissued and, consequently, the amendment should have been issued only to those firms that had already submitted proposals under the RFP.

We deny the protest.

The RFP, issued on July 19, 1994, required offerors to submit prices for estimated requirements of 450,000 pounds (basic quantity) and 450,000 pounds (option quantity) of Type I Halon 1301 and/or 50,000 pounds (basic quantity) and 50,000 pounds (option quantity) of Type II Halon 1301. Seven timely proposals were received by the August 15 closing date for the receipt of proposals.

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Subsequent to the receipt and evaluation of proposals, the agency learned that funding constraints during fiscal year 1995 required a substantial revision in its estimated requirements as set out in the RFP. In making this revision, the agency deleted all requirements for Type II Halon. Further, the agency concluded that, because the single awards for each type of Halon that were required under the RFP placed too much risk on offerors and possibly restricted competition to firms that had access to large quantities of Halon, offerors should be permitted to submit prices on lesser specified amounts, although no award would be made for less than 50,000 pounds. The agency reached this conclusion after reviewing the proposals received and after 11 firms that had not submitted proposals requested the opportunity to compete on future Halon purchases. For the same reasons, the agency revised the required delivery schedule. Also, the agency decided that the RFP should have advised offerors that their prices had to include any applicable excise taxes and that the RFP should be amended to correct this deficiency. The RFP was amended on January 6, 1995, to make these and other changes and to permit any firm, even one that had not submitted a proposal for the original RFP, to submit a proposal by January 31. After FRC filed its protest, the RFP was again amended to suspend the closing date until the protest is resolved.

The agency's decision to amend the RFP and, in essence, to resolicit its Halon requirements was reasonable. Contracting agencies have broad discretion in determining when it is appropriate to cancel a solicitation. In a negotiated procurement, such as the one here, the contracting officer need only have a reasonable basis for canceling after receipt of proposals, as opposed to the "cogent and compelling" reason required for cancellation of a solicitation after sealed bids have been opened. Cantu Servs., Inc., B-219998.9; B-233697, Mar. 27, 1989, 89-1 CPD ¶ 306. In this case, after receipt of proposals, 11 firms contacted the agency to request that they be allowed to take part in future Halon procurements. By effectively canceling the original RFP, and reopening the procurement, the agency will be able to obtain additional competition for the Halon purchases. The possibility of additional competition (and lower prices which often result from increased competition) generally provides a reasonable basis to cancel a solicitation. Bell Indus., Inc., B-233029, Jan. 25, 1989, 89-1 CPD ¶ 81; Dohrman Mach. Prod., Inc., B-223307, Aug. 25, 1986, 86-2 CPD ¶ 221. We think the agency's action here which is intended to increase competition is reasonable and supported by the record.

Alternatively, FRC, assuming for the sake of argument that the changes made to the RFP were substantial, contends that the agency erred in amending the RFP and instead should have

canceled it and issued a new solicitation pursuant to Federal Acquisition Regulation § 15.606(b)(4). We note that the effect on the competition was the same whether the agency amended or canceled the RFP. In any event, we do not think under the circumstances that the agency's actions were prejudicial to FRC, and prejudice is an essential element of any viable protest. Appalachian Council, Inc., B-256179, May 20, 1994, 94-1 CPD ¶ 319.

The protest is denied.

\s\ Michael R. Golden
for Robert P. Murphy
General Counsel