



Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: Chemical Interchange Company

File: B-259933

Date: May 10, 1995

DECISION

Chemical Interchange Company (CIC) protests the removal of an item for sale under invitation for bids (IFB) No. 31-5061, issued by the Defense Logistics Agency (DLA) for the sale of surplus government property. CIC maintains that the agency improperly withdrew one of the items for sale after bid opening to permit another higher bidder an opportunity to submit a timely bid.

We dismiss the protest.

The IFB was issued for purposes of selling various surplus government property; item No. 1 under the solicitation was a quantity of phosphoric acid. Bidders were advised that bid opening would occur on December 29, 1994, at 1 p.m. local time. The IFB contained a section entitled Additional General Information and Instructions that provided "[b]ids must be in the possession of the contracting officer by 3 p.m. [central standard time] the day prior to the bid opening." The IFB also authorized the submission of bids by facsimile and provided that such bids "will be accepted provided they are received prior to the specified bid opening date and time."

At bid opening, the agency received three bids for item No. 1. Two of the three bids, including the protester's, had been submitted by 3 p.m. on the day prior to bid opening. The third bid, submitted by Floied Fire Extinguisher & Steam Cleaning Company, was sent by facsimile and arrived at the agency at 12:47 p.m. local time on the day of bid opening; Floied's bid was the highest bid received. After bid opening, the contracting officer decided to withdraw item No. 1 from award because the inconsistency in the IFB's instructions had provided one of the bidders an improper competitive advantage; Floied had been afforded an additional day in which to prepare and submit its bid.

CIC maintains that the agency did not have a compelling reason to withdraw item No. 1, and that doing so created an impermissible auction situation for the resale of that item.

According to the protester, Floied's bid was late under the terms of the solicitation.

The agency's actions amounted to a cancellation of the IFB for item No. 1 after bid opening. Contracting officers have broad discretion to determine whether appropriate circumstances warranting cancellation of a solicitation after bid opening exist. Under Federal Acquisition Regulation § 14.404-1, an IFB may be canceled after bid opening where, for example, provisions of the solicitation are unclear or ambiguous, or where cancellation is clearly in the public's interest. See also Telemarc, Inc., B-242339, Apr. 15, 1991, 91-1 CPD ¶ 375. We have specifically held that where an IFB's bid submission instructions are inaccurate or do not reflect the agency's intentions in terms of where or when bids are to be submitted, the agency has a compelling basis to cancel the IFB. Bay Shipbuilding Corp., B-231918, Sept. 30, 1988, 88-2 CPD ¶ 305.

In this case, the bid submission instructions created a bidding environment in which at least one firm was afforded a competitive advantage. Firms submitting bids by facsimile were permitted by the plain language of the IFB to submit bids until the time and date set for bid opening, whereas firms submitting bids by other means were required to make their submissions by 3 p.m. the day prior to bid opening. Based on these instructions, Floied's bid was timely submitted. However, because the IFB did not provide a common cut-off time for the submission of all bids, DLA canceled the sale of item No. 1 in order to equalize and enhance the competition among all firms. This was the appropriate action under the FAR standard. See Bay Shipbuilding Corp., *supra*.¹

CIC maintains that the reason given by the agency during the protest for its withdrawal of item No. 1 is not the reason

¹CIC contends that Floied could not have been misled by the facsimile bid submission instruction because it was unaware of the provision at the time it submitted its bid. This argument is based on the incorrect premise that Floied's bid was a late bid since it was not submitted until the day of bid opening. As discussed above, however, Floied's bid was timely based on the instructions in the IFB. The question of whether Floied was aware of the discrepancy in the IFB therefore is irrelevant.

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relied on originally. However, an otherwise appropriate cancellation is proper no matter when the reasons for it are advanced. Currents Constr., Inc., B-236735.2, Feb. 27, 1990, 90-1 CPD ¶ 236.

The protest is dismissed.



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