

DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

LEVER

83023

FILE: B-192111

DATE: November 13, 1978

MATTER OF: ABC Demolition Corporation

DIGEST:

Compelling reason to cancel IFB after bid opening exists where IFB erroneously calls for disassembling and storing antenna and agency actually requires disassembly and removal of antenna with offerors giving price consideration to salvage value of antenna.

ABC Demolition Corporation (ABC) protests the determination of the General Services Administration (GSA) to cancel Invitation for Bids (IFB) No. 03C8097601.

On April 19, 1978, GSA issued the IFB which calls for bids to disassemble a 300 foot steel antenna tower located in Silesia, Maryland, and to store the antenna on the worksite as directed by the GSA Buildings Manager. Bids were opened on May 17, 1978, and ABC was the apparent low bidder. However, after bid opening, but prior to award, GSA determined that the IFB erroneously required the contractor to disassemble and store the antenna. Instead, GSA states the specifications should have required the contractor to disassemble the tower and remove it from the site. GSA believes that the removal of the tower constitutes a major change in the specifications, and points out that the antenna has a salvage value which will likely result in a reduction in cost to the Government. While ABC contends the decision to cancel the IFB violates applicable procurement regulations, GSA states there is compelling reason to cancel the IFB.

ABC's position is that removal and disposal of the antenna are requirements which should be handled under a separate solicitation in light of the regulatory preference that an award be made after bid prices have been exposed. ABC maintains that GSA is required to make an award to it under the IFB and then satisfy its other needs under another solicitation. ABC

contends that this procedure will result in just as low of an overall price to the Government and will preserve the integrity of the competitive bidding system.

In support of its position, ABC cites Federal Procurement Regulations (FPR) § 1-2.404-1(a) that:

" * * * As a general rule, after opening, an invitation for bids should not be cancelled and readvertised due solely to increased requirements for the items being procured. Award should be made on the initial invitation for bids and the additional quantity should be treated as a new procurement."

Additionally, ABC cites our decision GAF Corporation et al., 53 Comp. Gen. 586 (1974), 74-1 CPD 68, where we held that the use of inadequate or deficient specifications in and of itself is not a compelling reason to cancel an IFB.

We have long recognized that the authority of a contracting officer to cancel a solicitation is extremely broad and in the absence of bad faith or an abuse of discretion, a decision to cancel a solicitation will be upheld. Byron Motion Pictures Incorporated, B-190186, April 20, 1978, 78-1 CPD 308. However, cancellation is permitted only for compelling reasons. See Scott Graphics, Inc. et al., 54 Comp. Gen. 242 (1975), 75-1 CPD 302. A compelling reason to cancel a solicitation exists where after bid opening, and prior to award, a determination is made that the original specifications no longer serve the Government's actual needs. Cottrel Engineering Corporation, B-183795, September 22, 1975, 75-2 CPD 165.

In this case, it is clear that the IFB does not conform with GSA's actual requirements. The solicitation requires only that the contractor disassemble the antenna and store it on site. However, what GSA actually requires is that the tower be disassembled and removed from the site with offerors giving consideration to the

salvage value of the tower. ABC's position that the Government's actual needs could be satisfied by making an award under the IFB and procuring its other needs under a separate solicitation is not convincing, since it is likely the cost savings to be realized in consolidating the Government's requirements would not be realized by bifurcating the requirements. In this regard, the methods used by a contractor to disassemble an antenna which is to be stored would seemingly differ from those used to disassemble an antenna which is to be sold as scrap. In any case, combining the related requirements will result in the use of a single contractor and eliminate the labor costs to store the antenna and start-up costs.

Furthermore, we cannot agree with the protester that FPR § 1-2.404-1(a) compels GSA to make award to it. This regulation applies to situations where after bid opening, but prior to award, the Government determines an additional quantity of the same item is needed. It is inapplicable to these circumstances where the change in agency needs involves additional performance of a different nature than that required under the IFB, as well as elimination of part of the work solicited.

Our decisions GAF Corporation et al., supra, and Joy Manufacturing Co., 54 Comp. Gen. 238 (1974), 74-2 CPD 183, also cited by the protester, do not apply to the circumstances here. In Joy, which we characterized as "atypical," we held a proposed IFB cancellation improper because the low bidder offered something "above and beyond" the requirements in the original solicitation and actually met the Government's additional needs. Further, none of the other bidders in Joy were responsive to the original solicitation thereby enabling an award without prejudice to other bidders. In GAF, cancellation of the IFB would have created an auction as it was anticipated that no new bidders would participate in a resolicitation and bidders would be offering the same product as offered under the original solicitation. Here, of course, a resolicitation will entail different performance than that initially contemplated.

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In view of the above, we believe GSA's determination that a compelling reason to cancel the IFB exists is reasonable. Accordingly, the protest is denied.

A. F. K. 11
Deputy Comptroller General
of the United States