



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20541

40063

October 11, 1973

B-178946

Morgan, Lewis & Bockius
1140 Connecticut Avenue, N. W.
Washington, D. C. 20036

Attention: Loren K. Olson, Esq.

Gentlemen:

Reference is made to your letter of July 30, 1973, and prior correspondence of the Hittman Nuclear & Development Corporation (Hittman), regarding that firm's protest against the cancellation without award of invitation for bids No. N00102-73-B-0086 by the Portsmouth Naval Shipyard, Portsmouth, New Hampshire.

In your July 30 letter you requested a conference with our Office regarding the protest. Because to date you have not suggested a possible date for such conference, we will consider the protest on the record before us so as to expedite both a resolution of the protest and the reprocurement of the required services.

The invitation, which covered the procurement of services for the removal and disposal of unclassified radioactive waste from the Portsmouth Naval Shipyard, was issued on March 2, 1973. On March 12, the Vice President and General Manager of Hittman telephoned the contracting activity to advise that he felt the specifications were restrictive in favor of the present contractor. He then forwarded a letter which outlined the services and equipment offered by Hittman. Consequently, the bid opening was extended so that the technical specifications of the invitation could be reviewed with a view to eliminating any restrictive areas. On March 27 the invitation was amended by revising the specifications and by extending the opening date to April 16. Four bids were opened on that date. A technical review of the bids, however, indicated that the specifications as written did not satisfy the contracting activity's requirement, and, consequently, on May 10 an amendment was issued cancelling the invitation in order that the specifications might be revised. It is this action which Hittman protests.

The contracting officer's determination to cancel the invitation was based on the following reasons, of which Hittman was advised. It was felt that additional details were required for the item No. 0007

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specification in order to better define the tank and fitting dimensions and to adequately describe the tank filter arrangement to assure that the maximum amount of tank contents was removed. Also, the weight limitation under item No. 0008 was found to have been inadvertently omitted, and it was felt essential that this information be included in the specifications to assure that the capacity of the shipyard crane being utilized to lift the item would not be exceeded. Hittman was further advised that the evaluation criteria outlined on page 10 of the invitation would not permit awards by item as Hittman had requested.

It is the contention of Hittman that the changes as described are not substantive and in any event pertain to a severable part of the procurement. First, as regards item No. 0007 it is alleged that the tank as described in the revised specifications is identical to the type used in all Navy shipyards and that all four bidders were cognizant of the type of tank so used. Further, it is contended that the revisions made for this item have no effect on price. Second, as concerns item No. 0008 it is contended that all prior Navy requirements have used casks weighing less than 49,000 pounds and that it is common practice for firms in this field of work to use casks weighing less than this weight. It is felt again that this specification revision has no effect on price. As regards both items, it is further noted that they deal with the disposal of spent resins, a requirement for which some shipyards contract on a shipment-by-shipment basis. Thus it is felt that award could have been made on all items except Nos. 0007 and 0008, the requirements for which could have been resolicited. This could have been done, it is believed, instead of cancellation of the entire invitation after the exposure of the Hittman bid price to its competitors.

As regards item No. 0007, the contracting officer notes that there is no standard technical requirement that all shipyards have identical tanks. In any event, if the specifications had not been revised the procurement activity would not have been assured that a maximum amount of the tank contents would be removed from the tank and that all piping would be supplied in the detail demanded by that activity. It is stated that as regards the changes having no effect on bid prices, such could not be assumed by the contracting officer nor be positively stated by the activity's technical personnel.

Concerning item No. 0008, the contracting officer notes that though it might be reasonable to assume that most companies in the waste disposal business attempt to ship on a legal weight shipping basis, meaning that they would use only casks weighing 49,000 pounds or less, it is also

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possible for a supplier to obtain a special permit for shipping a such heavier cask. Consequently, it was felt essential for the protection of life that the weight-lifting capabilities of the shipyard cranes to be utilized would not be exceeded. For this reason the invitation specifications had to be revised to state a specific weight limit for this item.

Paragraph 2-404.1(b)(1) of the Armed Services Procurement Regulation (ASPR) provides for cancellation of a formally advertised procurement after bid opening but before award when the specifications are determined to be inadequate; ASPR 2-404.1(b)(1) permits cancellation when the specifications have been revised. Our Office has long recognized that contracting officers are clothed with broad powers of discretion in this area and we will not interfere with a determination to cancel a procurement for one of the aforementioned reasons unless such determination is arbitrary, capricious, or not based upon substantial evidence. B-169492, July 17, 1970; B-170077(2), September 23, 1970; B-178282, July 27, 1973. Although it is unfortunate that the need to make revisions was not discovered prior to bid opening, we do not find the contracting officer's determination to cancel the procurement for the stated reasons to be arbitrary, capricious, or based on insubstantial evidence. Consequently, we will not object to that determination.

As regards your belief that at minimum these two items could have been deleted from the procurement and awards made to each low bidder on the remaining items, we bring to your attention that portion of the invitation which deals with the basis of award, which provides that:

"AWARD OF ANY CONTRACT RESULTING FROM THIS SOLICITATION WILL BE TO THAT BIDDER OFFERING THE LOW AGGREGATE BID FOR ALL ITEMS OF THE SCHEDULE ('ALL OR NONE'), HOWEVER, IN ORDER TO BE CONSIDERED RESPONSIVE TO THIS SOLICITATION, BIDDER MUST INDICATE UNIT PRICE FOR EACH ITEM."

This precludes awards on an item basis inasmuch as it advises each bidder that he may bid by taking into account the total volume of work and any efficiencies he might effect therefrom. We note in this respect that the solicitation issued for the procurement after cancellation of the invitation introduces under item No. 0007 a change providing that the cost of the tank shall not include any special transportation charges inasmuch as the tank, when required, is to be delivered when a truck is dispatched to the shipyard to pick up items Nos. 0001-0004 or to deliver item No. 0008.

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Accordingly, the protest is denied.

Sincerely yours,

Paul G. Dembling
For the Comptroller General
of the United States