Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Mobile Dredging & Pumping Company

File: B-278725

Date: March 6, 1998

Donald J. Walsh, Esq., Scaldara & Potler, for the protester.
George M. Kingsley, Esq., and Joseph J. Cox, Esq., U. S. Army Corps of Engineers, for the agency.
Sylvia Schatz, Esq., David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency had a compelling reason to cancel solicitation after bid opening where requirement in solicitation did not meet its actual needs.

DECISION

Mobile Dredging & Pumping Company, Inc. protests the U.S. Army Corps of Engineers' cancellation of invitation for bids (IFB) No. DACW31-97-B-0061, for dredging of the Dalecarlia Reservoir at the Washington Aqueduct in the District of Columbia.

We deny the protest.

The Washington Aqueduct provides drinking water to the District of Columbia and parts of Virginia, utilizing the Dalecarlia Reservoir as one of its settling areas prior to water treatment. The solicitation required dredging the reservoir of sediment and pumping the sediment through a pipe to dewatering equipment, where the sediments or solids will be separated from the water; the sediment then is to be discharged onto a concrete pad and hauled away, while the leftover water will be discharged to a dewatering discharge pond and then returned to the reservoir. The specifications permitted the contractor to use a polymer to bond with the sediments so that they may be separated and removed from the water. However, the specifications imposed certain restrictions on the use of polymers because, while most of the polymer is discharged with the dewatered solids onto the concrete pad, some polymer remains in the filtrate water--i.e., water that has been discharged from the dewatering equipment.

Specifically regarding polymers, section 02482 of the specification, entitled "Dredging, Dewatering, and Sediment Disposal," stated, in relevant part, as follows:

> 7.6 Dewatering operations shall be accomplished through a number of portable mechanical dewatering units. The portable dewatering equipment shall be either centrifuges, plate and frame filter presses or twin belt filter presses. Prior to entering the dewatering equipment, the dredged material may be mixed with a polymer, provided that the polymer is suitable for use with potable water. The Contractor shall submit to the Government, for approval, the polymer he will be using. The polymer shall be acceptable for use in potable water and be approved by the National Sanitation Foundation (NSF). Submittal shall have complete information, characteristics about the product and mixing proportions.

Five bids were received and opened. Mobile submitted the apparent low bid of $3,428,950, and Sevenson Environmental Services, Inc. the apparent second low bid of $3,468,060.

Subsequently, following an agency-level protest filed by Sevenson and several exchanges with Mobile, the Corps realized that Mobile's interpretation of paragraph 7.6 was inconsistent with the Corps's intent. The record indicates that the Washington Aqueduct, the drafter of the specification, intended paragraph 7.6 to impose NSF Standard 60--a drinking water standard--as a limit on the amount of polymer permitted to be added to the dredged sediment prior to dewatering. It was Mobile's position, on the other hand, that the IFB could not be read this way because (1) the NSF standard was not set forth as a requirement, and (2) even if it were referenced, it is a drinking water (i.e., post-dewatering) standard, and cannot be read as limiting the amount of polymer added to remove sludge at the beginning of the dewatering process.

Subsequently, the Corps (along with the Washington Aqueduct) determined that paragraph 7.6 was defective because it did not clearly state the agency's needs. Specifically, (1) as Mobile had asserted, the IFB did not reference the NSF standard for drinking water; (2) in any case, imposing the NSF standard as a limit on the polymer added (rather than to the amount remaining after dewatering) would be excessively strict (since the amount of polymer added before the dewatering process does not equate directly to the amount of polymer remaining in the treated water emitted from the dewatering equipment); and (3) it did not contain an effective means of ensuring that treated water would contain acceptable levels of polymers. The Corps therefore canceled the IFB with the intention of resoliciting using an amended paragraph 7.6.

Mobile argues that, contrary to the agency's determination, paragraph 7.6 was unambiguous in stating the agency's needs, and that the cancellation therefore was improper.

An agency generally may cancel an IFB after bid opening and exposure of prices only where there is a compelling reason to do so. Federal Acquisition Regulation § 14.404-1(a)(1); City Wide Press, Inc., B-231469, Aug. 10, 1988, 88-2 CPD ¶ 127 at 2. Whether cancellation is warranted is a decision for the contracting agency, whose determination we will not disturb unless it is shown to be unreasonable. City Wide Press, Inc., supra, at 2-3. We generally consider cancellation after bid opening to be appropriate when an award under the solicitation would not serve the government's actual needs. Berendse & Sons Paint Co., B-262244, Nov. 21, 1995, 95-2 CPD ¶ 235 at 3.

Mobile's challenge to the cancellation is based on its view that the IFB as written clearly did not limit the amount of polymers the contractor would be allowed to add. This argument ignores the agency's position that the NSF standard for polymers in drinking water must be imposed on the contractor, and that the IFB as written--whether or not ambiguous--does not ensure that water emitted from the dewatering equipment will meet that standard. The record supports the Corps's position. First, the Corps has determined that, given that water from the dewatering process will be returned to a reservoir used to produce drinking water, the NSF Standard 60 maximum use limits for polymers must apply to the water emitted from the dewatering equipment. We agree with Mobile's original position that since the IFB did not reference the NSF standard, there was no basis for reading the IFB as including it.

More importantly, since the agency now agrees with the protester that it is not appropriate to apply the NSF standard to the amount of polymer added to the dredged sludge (the approach on which the Corps claims the IFB was based), the original IFB contains no effective means of confirming that a particular standard has been met. In this regard, although specification paragraph 7.6.7 provided for testing filtrate water for solid content, the Corps has determined (and the protester does not rebut the agency's position) that testing for polymer in the filtrate water discharged into the reservoir would be difficult at best, since there is no known standard test for identifying the level of a particular polymer in the filtrate water and the nature of any such test, even if feasible, would make it exorbitantly costly to conduct. More fundamentally, the agency notes the impracticality of testing for polymer at the end of the dewatering process--after the contractor has set up its equipment and committed to a particular method and mixture, which may or may not result in acceptable polymer levels in the water discharged into the reservoir.

To ensure compliance with NSF Standard 60, the Corps reports that it intends to amend paragraph 7.6 to impose the following requirements on the contractor: (1) explicitly require that the contractor's proposed NSF-approved polymer meet the

NSF standard maximum use level in the filtrate water; (2) require the contractor to submit to the government for approval the polymer it intends to use, including complete technical data, material characteristics, a material safety data sheet, mixing proportions, and calculations verifying that the polymer concentration that enters the reservoir from the dewatering equipment for a peak production day will not exceed the NSF maximum use level based on a specified reservoir flow rate (150 million gallons per day); and (3) require the contractor to furnish the government with a record of the amount of polymer used each day and the total amount of filtrate water recycled into the reservoir.

We conclude that the IFB did not set forth the agency's actual needs, and that the cancellation therefore was proper.

The protest is denied.

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