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**DECISION**



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

*[Protest of IFB Cancellation]*

FILE: B-199293

DATE: April 8, 1981

MATTER OF: Johnson & Wales College

**DIGEST:**

1. Inclusion of restrictive accreditation requirement is not proper basis for cancellation of solicitation where record does not show requirement inhibited competition and where award properly could have been made on basis of accreditation equivalent to that specified.
2. IFB for requirements-type contract which does not contain quantity estimates for several line of items was properly canceled since without estimated quantities bids could not be properly evaluated on basis of all work to be let.

Johnson & Wales College protests the cancellation of IFB M67001-80-B-0027 (IFB 0027) for instruction services for the Marine Corps Basic Skills Education Program and the agency's award of a contract for the same services to Coastal Carolina Community College under IFB M67001-80-B-0036 (IFB 0036).

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IFB 0027, which was issued on May 23, 1980 by the Marine Corps' Camp Lejeune, called for bids for five types of teaching services on an hourly basis and for administrative services on a monthly basis for a 12-month period. Item 0001 was for teaching basic subject courses while items 0002 through 0005 were for different special courses. The solicitation provided that there would be six basic subject course classes (item 0001) consisting of 180 course hours each and that the number and duration of the special courses (items 0002-0005) would be tailored to the needs of the organization.

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On the day of bid opening under this IFB Johnson protested to our Office that a solicitation clause requiring the contractor to be a "regionally accredited educational institution approved by the Southern Association of Colleges and Schools" was inconsistent with the procuring agency's obligation to maximize competition. The protester noted that while it was fully qualified to provide the services and accredited by the Association of Independent Colleges and Schools, it was not approved or accredited by the Southern Association of Colleges and Schools.

Seven bids were opened as scheduled and it appears from the initial evaluation evidenced on the abstract of bids that Johnson's bid was low. The agency reports that it conducted an analysis of the solicitation because of Johnson's protest and determined that the solicitation was "unduly restrictive" in that it did not provide a means to evaluate items 0002 through 0005 which would reflect the overall cost to the Government and that the effect of the protested provision was to restrict award to educational institutions accredited in only one of the six accrediting regions of the United States. Consequently, the Marine Corps canceled the IFB on July 15.

On July 29, Johnson protested the cancellation and demanded that award be made to it as the low bidder. In its July 29 letter, Johnson argued that it fairly won the competition with the low bid and since bids had been exposed any resolicitation would undermine the integrity of the competitive system.

Despite Johnson's protest, the agency on September 17 issued IFB 0036. The new solicitation contained a less restrictive accreditation provision and estimated requirements of 8000 hours for item 0001 and 240 hours each for items 0002 through 0005. Of the six bids received, Coastal's bid was determined to be low at \$126,865.52 while Johnson's bid was evaluated as fourth low at \$154,394.80. Award was made to Coastal on October 17, notwithstanding the pending protest.

Johnson argues that there was no compelling reason to cancel the original solicitation. In this regard, the protester explains that the accreditation provision in the original solicitation did not inhibit firms from submitting

bids, as five of the seven firms which submitted bids were located outside the region covered by the Southern Association while all four of the firms on the bidder's list which did not submit bids would have been covered by that Association. Further, Johnson dismisses the agency's position that the lack of estimated quantities to be used in evaluating prices under items 0002 through 0005 justified cancellation by characterizing that position as "after-the-fact, litigation-inspired nonsense." The protester notes that there is no mention of the alleged evaluation problem in any documents contemporaneous with the bid evaluation and states that the bid abstract shows that prices of all bidders were recorded, evaluated and extended without a problem and that all bids were evaluated on the same basis. We deny the protest.

Contracting officers have broad discretionary authority to reject all bids and cancel an IFB. Scott Graphics, Incorporated; Photomedia Corporation, 54 Comp. Gen. 973 (1975), 75-1 CPD 302. However, because of the potential adverse impact on the competitive bidding system of canceling an IFB after all bid prices have been exposed, contracting officers, in exercising their discretion, must find that a compelling reason exists that warrants cancellation. Engineering Research, Inc., 56 Comp. Gen. 364 (1977), 77-1 CPD 106. The fact that the terms of an IFB are deficient in some way does not by itself constitute such a compelling reason. North American Laboratories of Ohio, Inc., 58 Comp. Gen. 724 (1979), 79-2 CPD 106. In determining if a compelling reason exists to justify cancellation, two factors must be examined: (1) whether the best interest of the Government would be served by making award under the subject solicitation, and (2) whether bidders would be treated in an unfair and unequal manner if an award were made. North American Laboratories of Ohio, supra.

When a solicitation requirement such as the accreditation provision in question is unduly restrictive, its presence can be sufficient reason to cancel a solicitation. Suburban Elevator Company, Inc., 59 Comp. Gen. 18 (1979), 79-2 CPD 246; Halifax Engineering, Incorporated, B-190405, March 7, 1978, 78-1 CPD 178. We do not believe, however, that inclusion of this provision in fact restricted competition or prevented the Government from making award in its best interest and consequently its inclusion in the IFB did not constitute a compelling reason to cancel the IFB.

First, it appears that the original accreditation provision did not inhibit competition in this instance as the agency has not disputed the protester's claim that five of the seven bids received were from bidders outside the Southern Association area and that the four solicited firms which did not respond were located within that area. Further, we have upheld, based on the well-established rule that literal compliance with a definitive responsibility requirement (as the accreditation requirement is) is not necessary, an agency's determination to accept a firm's accreditation which is equivalent to the accreditation specified in an IFB provision. Pikes Peak Community College, B-199102, October 17, 1980, 80-2 CPD 293. Thus, the agency was not prevented by the provision from making award to Johnson if the agency determined that Johnson possessed accreditation equivalent to that specified for the work encompassed by the IFB. We note that it is clear from the record that the agency believes Johnson's accreditation is sufficient for contract performance.

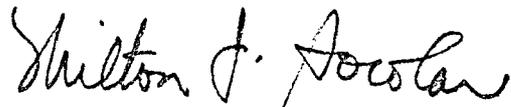
We believe, however, that the cancellation was nevertheless proper. Although it is true that the agency did not initially emphasize the lack of estimated requirements for items 0002 through 0005 as a reason for canceling the solicitation, an agency may cancel a solicitation no matter when the information precipitating cancellation first surfaces. Ingersoll-Rand Company, B-192279, October 6, 1978, 78-2 CPD 258. The agency now maintains that the original solicitation was defective because it did not contain estimated requirements for items 0002 through 0005 and the estimated requirement for item 0001 was greatly understated. We agree.

The lack of estimated quantities rendered the solicitation defective and per se tainted the competition because bids must be evaluated on the basis of all work to be let, Instant Replay Equipment Company; Recording Center Service Company, B-193826, June 15, 1979, 79-1 CPD 423, and a proper evaluation to determine the low bidder on all the work cannot be made without estimated quantities for each item of effort. In addition, we have also recognized that the absence of estimated quantities for a requirements contract generally encourages unbalanced bidding and makes it impossible to determine whether bid prices are fair and reasonable for the actual effort involved, Edward B. Friel, Inc., 55 Comp. Gen. 231 (1975), 75-2 CPD 164, and makes it impossible for prospective contractors to prepare their bids properly. Elrich Construction Company, B-187726,

February 14, 1977, 77-1 CPD 105. Accordingly, we find that the agency acted within its discretion in canceling the solicitation.

Finally, we note the protester's assertion that the cancellation, resolicitation and award of the contract to Coastal was the result of a planned effort on the part of the agency to award the contract to Coastal even though Johnson was originally the low bidder. We fail to see the logic in the protester's hypothesis when its own action in filing a protest just hours before the time set for bid opening under the original solicitation initiated the chain of events which resulted in the award to Coastal.

The protest is denied.



Acting Comptroller General  
of the United States