

DECISION

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KNOX

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

FILE: B-207084, B-207377 DATE: September 20, 1982

MATTER OF: McGregor Printing Corporation

DIGEST:

1. Partial cancellation of invitations for bids after opening was proper where agency reasonably determined that purchase of some items called for in the solicitations were no longer necessary due to a reduction in demand for items and reduction in space available for their storage. The fact that the agency subsequently issued new solicitation for the same items is not relevant where the new solicitation contemplated different contract type, and later delivery.
2. Protester's contention that agency should have made award in face of overstock position and adjusted specified delivery schedule after award is without merit, since it would be improper for agency to award contract with intention to change delivery schedule after award.
3. Agency properly requested extension of bid acceptance periods when it became obvious, because of administrative delays, that awards could not be made within bid acceptance period specified in solicitations.

McGregor Printing Corporation protests the partial cancellation of invitations for bids (IFB) Nos. 2FC-NEJ-A-A0621Q (621) and 2FC-NEB-A-A0617Q (617), both of which were issued by the General Services Administration (GSA) for various quantities of tabulating paper. The essential issue raised in both protests is whether GSA's decision to cancel part of both solicitations after bid opening was proper.

For the reasons that follow, we deny the protests.

IFB 621 was issued on October 14, 1981, with a November 17 opening date. IFB 617 was issued on December 15, with a January 12, 1982 opening date. Both solicitations sought bids for definite quantities of tabulating paper, which were to be shipped to various GSA supply depots. McGregor was the low bidder on several items on both solicitations. Both solicitations originally contained 75-day bid acceptance periods; however, GSA requested and McGregor granted extensions to March 3 and April 15, in connection with IFB 621 and to April 30 under IFB 617.

Subsequent to these extensions, GSA--relying on Federal Procurement Regulations § 1-2.404.1(b)(2), which permits cancellation of a solicitation if the supplies or services are no longer needed--determined that it could not use a portion of the items on which McGregor was the low bidder. Therefore, it canceled the parts of the solicitations relating to those items. On March 26, 1982, GSA issued IFB 2FC-NEB-A-0623Q (623), which sought bids for a requirements contract (with a guaranteed minimum quantity) for the same type of tabulating paper for which bids had been solicited by the canceled portion of IFB 617. In addition, GSA advises that it has plans to issue a similar solicitation for the type of tabulating paper called for by the canceled portion of IFB 621.

McGregor contends that there was no compelling reason for GSA's failure to award it a contract for the items on which it was the low bidder. McGregor further contends that the cancellation was simply a result of GSA's decision to procure on a requirements basis instead of a definite quantity basis.

GSA responds that its decision to cancel portions of both solicitations was based on an unanticipated curtailment in demand, a reduction in the number of GSA depots, and in the amount of space available in the remaining depots. The agency states that it found an average of almost 9 months stock on hand for the items canceled under IFB 617, and an average of 8 to 12 months stock for those canceled under IFB 621. GSA states that it did not have the capacity to store the additional paper called for in the solicitations, and that this overstock situation, coupled with the curtailed demand, presented a compelling reason to cancel the appropriate portions of the solicitations. GSA further points out that while its new IFB solicits bids for

the same commodity as that covered by the canceled IFB, delivery is not anticipated to begin under the requirements contract until most of the overstocked quantities will have been depleted. GSA denies that the cancellation resulted because the method of procurement was to be changed. It states that while the change to a requirements contract approach had been discussed with industry in the autumn of 1981 and was eventually decided upon, the cancellation here was not related to that and reflected only the overstock situation.

Cancellation after bid opening and the exposure of bids is not permitted unless a cogent and compelling reason for cancellation exists. However, the determination as to whether such a reason exists is an administrative one that is not subject to legal objection unless the protester can demonstrate that the decision was arbitrary, capricious, or not supported by substantial evidence. A.B. Machine Works, Inc., B-187563, September 7, 1977, 77-2 CPD 177; TSG Aviation, B-106096, June 21, 1976, 76-1 CPD 397.

McGregor has failed to make that showing. First, McGregor concedes that an overstock position may have existed, although it argues that award of the items would have caused only a "minor inconvenience" which did not justify cancellation of the solicitations. In light of the overstock situation, we do not believe we could legally conclude that GSA acted arbitrarily in concluding that, temporarily, it had no need for the items and that cancellation therefore was appropriate. While it is always unfortunate when solicitations are canceled after bids have been exposed, the regulations permit cancellation when there is no need for the items. Therefore we must conclude that GSA's actions were reasonable here and were not taken merely because of GSA's intention to change to a requirements contract.

McGregor further contends that GSA should have made the awards under the original IFBs and later modified the delivery schedules in the resulting contracts so that the items would not be delivered until after the overstock problem was alleviated.

This would have been improper. A contracting officer may not award a contract competed for under terms set forth for all bidders in the solicitation with the intention to change one of those terms, in this case the delivery schedule,

after award. See A&J Manufacturing Company, 53 Comp. Gen. 838 (1974), 74-1 CPD 240; Worldwide Direct Marketing, B-200371, April 2, 1981, 81-1 CPD 253.

McGregor also contends that it was improper for GSA to seek extensions of the bid acceptance periods contained in McGregor's bids while it was contemporaneously considering canceling the solicitations.

GSA responds that, with respect to IFB 621, it requested an extension from McGregor because it had not completed evaluation of the bids at the time the protester's original bid acceptance period was to expire. Regarding IFB 617, GSA states that the contracting officer found the low bidder nonresponsible on the items in the solicitation which were not to be canceled. Since the protester was the next low bidder and the small business low bidder was seeking a Certificate of Competency from the Small Business Administration (SBA), GSA states that McGregor was asked to extend its bid acceptance period to permit the SBA to complete its review of the low bidder. The protester, of course, would be in line for the award if the low bid were rejected.

There is no evidence in the record to indicate that when GSA requested these extensions the agency intended to resolicit the requirements under IFB Nos. 617 and 621 under subsequent solicitation. Further, the determinations to cancel portions of the two solicitations were not made until after the requests for extension of bid acceptance time were made. It is within the contracting agency's discretion to request such extensions when it deems it necessary for administrative purposes and, of course, the bidder may refuse the request and withdraw its bid. Yardney Electric Division, 60 Comp. Gen. 499 (1981), 81-1 CPD 440. We see nothing improper in the agency's actions here.

The protests are denied.

William E. ...
Comptroller General
of the United States