

DECISION



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

FILE: B-210317

DATE: May 10, 1983

MATTER OF: Chemical Compounding Corporation

DIGEST:

Cancellation of solicitation after bid opening and resolicitation was proper where agency reasonably determined that, since bids had been opened prematurely, there was apparent prejudice to awardee under prior procurement, which had protested premature opening, and to other potential bidders. Even if protester has shown that increased competition was unlikely based on limited competition in past and on the resolicitation (prior awardee did not bid), agency's exclusion of incumbent alone supports cancellation.

Chemical Compounding Corporation (Chemical) protests the Defense Logistics Agency (DLA) cancellation of invitation for bids (IFB) No. DLA400-82-B-6758 for chlorination kits.

We deny the protest.

Prior to the scheduled October 19, 1982, bid opening, the procuring activity determined that the purchase item description contained in the IFB should be rewritten to delineate more clearly the components of the item. Therefore, on October 15, 1982, the procuring activity issued a TWX to 23 potential bidders extending the bid opening date indefinitely and indicating the item description might be revised. Nevertheless, on October 19, 1982, three bids that had already been received were opened in error. The low bid was determined nonresponsive. The next low bid was submitted by Chemical, and the other bid was submitted by Anachemia Chemical (Anachemia). On October 23, 1982, Ecologic Instrument, Division of Industrial Municipal Equipment, Inc. (Ecologic), the awardee on the last IFB for these kits (IFB No. DLA400-82-B-2632), protested to the contracting officer against the premature opening because it had not submitted a bid in reliance on the indefinite extension.

On November 2, 1982, the contracting officer canceled the IFB because of the premature bid opening and inadequate/

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ambiguous specifications. After bid opening, DLA had received a requirement for an additional quantity of kits. The quantities originally solicited under the IFB were added to a new IFB (No. DLA400-83-B-1338) issued with a revised purchase item description for an indefinite delivery-type contract. The minimum amount the Agency is required to purchase under the indefinite delivery-type contract exceeds the quantities solicited on the canceled IFB, and the estimated quantities are considerably larger. Anachemia submitted the low bid under this IFB.

DLA contends that, due to the premature bid opening, potential bidders, including the last successful bidder which protested, had been prejudiced and, therefore, full and free competition had not been obtained. The Agency cites Quaker Business Associates, Inc., B-187207, November 17, 1976, 76-2 CPD 430, where our Office held that when bids had been opened prematurely, cancellation of an IFB after opening was proper. The contracting officer states that once the premature bid opening occurred, she decided that greater harm would be done to the competitive bidding procedures by awarding the contract, thereby excluding firms from competing, than by canceling the IFB despite the fact that the low responsive bid of Chemical had been exposed.

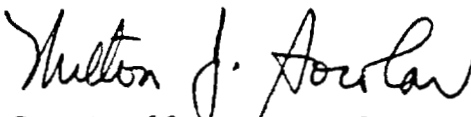
Chemical contends Quaker is not applicable because, there, since only two bids were received and several firms requested that the bid opening date be extended, the agency justifiably determined that full and free competition had not been obtained. Here, Chemical argues that there was adequate competition and that it was unlikely that increased competition would result. To support this, Chemical points out that under IFB -2632 only Chemical, Anachemia, and Ecologic bid; under the canceled IFB, only Chemical and Anachemia submitted responsive bids; and under the resolicitation, only one new bidder (not low) surfaced other than Chemical and Anachemia. Chemical finally states that it is speculative whether Ecologic would have submitted a bid and that the firm actually failed to bid on the resolicitation.

The cancellation of an invitation for bids after bid prices have been exposed must be based on cogent and compelling reasons. Scott Graphics, Incorporated, et al., 54 Comp. Gen. 973 (1975), 75-1 CPD 302; Defense Acquisition Regulation (DAR) § 2-404.1 (Defense Acquisition Circular

No. 76-17, September 1, 1978). A contracting officer has broad discretion in determining whether a cogent and compelling reason exists, Marmac Industries, Inc., B-203377.5, January 8, 1982, 82-1 CPD 22, and, thus, a determination to cancel a solicitation is not legally objectionable unless there clearly is no reasonable basis for it. Central Mechanical, Inc., B-206030, February 4, 1982, 82-1 CPD 91.

Chemical has not shown that the decision to cancel was unreasonable. In our view, the contracting officer acted reasonably at the time of her decision to cancel the IFB because of the premature bid opening, the Ecologic protest of that opening, and the number of potential bidders. While we agree that Quaker is factually distinguishable, the rationale supporting cancellation applies here. Chemical's argument concerning the results of the resolicitation has no bearing on the propriety of the cancellation of the initial solicitation. See Nordam, Division of R. H. Siegfried, Inc., B-189996, August 17, 1978, 78-2 CPD 126; PM Contractors, Inc., B-192495, January 8, 1979, 79-1 CPD 8; Hermes Products, Inc., B-204487.3, July 6, 1982, 82-2 CPD 15. In any event, to the extent Chemical has shown that only it, Anachemia, and Ecologic ordinarily compete for this requirement, we have held that the failure to solicit an incumbent contractor, one of a limited number of manufacturers of an item being procured, supports a determination to cancel an IFB and readvertise. Scott Graphics, Incorporated, supra.

Protest denied.

for 
Comptroller General
of the United States