

**DECISION**

27098

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

**FILE:** B-210684, B-210684.2 **DATE:** December 21, 1983

**MATTER OF:** Dyneteria, Incorporated; Tecom, Incorporated

**DIGEST:**

1. Although a contracting officer has broad discretion to cancel a solicitation, because of the potential impact on the competitive system of canceling an invitation for bids after bid opening, regulations require a compelling reason for such action. The fact that some terms of the invitation for bids are in some way deficient does not, of itself, constitute a compelling reason to cancel.
2. Where a solicitation does not identify the precise number of each item to be serviced under a contract, but instead groups two similar items together in a single quantity, bidders can take whatever minor uncertainty is involved into account in computing their bids; the solicitation was not defective merely because the number of each item was not precisely indicated.
3. Although historical data contained in a solicitation could be misleading to bidders in light of increased requirements under the new contract, when those increased requirements are identified at a bidders' conference and spelled out in a solicitation amendment, no bidder should be misled and the presence of the historical data does not provide a basis for canceling the solicitation after bid opening.
4. Where an invitation for bids contains a number of separate requirements, one of which is servicing Government-owned equipment and, after bid opening, the agency discovers that it failed to include two items in an inventory of approximately 844 items, and the record shows that adding the

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two missing items to the resulting contract would vary the contractor's obligation in an insignificant manner from the stated solicitation requirements and would have little effect on price, the need to add that requirement to the contract does not provide a compelling reason to cancel the solicitation.

Dyneteria, Inc. and Tecom, Incorporated protest the cancellation of solicitation No. F34650-83-B-0008 for ground support services at Tinker Air Force Base, Oklahoma. Because we agree that there was no cogent reason for cancellation, we sustain the protest.

The Canceled Solicitation

The Air Force issued this invitation for bids on December 1, 1982 seeking a contractor to provide the labor, parts and material needed to position, inspect, maintain and repair approximately 884 pieces of ground support equipment and to provide certain other services in support of flight operations. As was the case for the other categories of services, bids for the maintenance of the ground support equipment were obtained on a fixed price basis for all work required during the contract year and for each of the 2 option years. However, to accommodate possible changes in inventory, bidders were also required to bid a separate monthly price for maintaining each type of powered equipment to permit adjustments during contract performance.

Three bids were submitted by the January 10, 1983 opening date, two by the protesters here, Dyneteria and the Tecom, and the third by the incumbent contract, Midwest Maintenance & Construction. As reported by Dyneteria,<sup>1</sup> the correct bid prices are:

Tecom	\$3,095,566.00
Dyneteria	\$4,003,977.48
Midwest	\$4,052,130.36

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<sup>1</sup>Although these prices differ from those on the bid abstract, the Air Force offers no explanation, objection or indication of what it believes the correct prices should be.

### Evaluation of Bids

The contracting officer reports that he believed the solicitation was defective in three areas. First, he states that the the inventory of ground support equipment failed to differentiate between the model A-3 and the model MA-3 gas air conditioner and between the model 32C5 and the model MA-3M electric air conditioner. Instead, the inventory simply indicated total quantities for "A3/MA3 (gas)" and for "32C5/MA-3M (Elect)" air conditioners. The contracting officer concludes that this did not permit evaluation of bids on an equal basis because there was no feasible method for determining what quantity applied to each model.

Second, the contracting officer views the painting provisions of the solicitation as ambiguous because the stated requirement for painting 25 percent of the equipment per year could be met by painting the entire 25 percent on the last day of the year, rather than when needed, as intended by the Air Force. Consequently, the contracting officer believes that the painting requirement should have been prorated throughout the year and requested by a separate line item. Moreover, according to the contracting officer, the 20,000 manhours indicated for unscheduled maintenance in the historical data portion of the solicitation is misleading because it was based on the prior contractual requirement for painting 3 percent of the equipment per year, while the present solicitation requires painting 25 percent per year, an increase of 8,000 manhours per year.

Finally, the contracting officer reports that the solicitation failed to identify two Ace air conditioning units that were intended to be covered by the contract. The contracting officer states that these units are large, weighing approximately 16,000 pounds, and require special towing over public streets for maintenance in an off-base facility. The contracting officer believes that these units should have been identified in the solicitation and the special towing requirements clearly defined.

Accordingly, the contracting officer determined that the solicitation was defective and that cancellation was justified even though bid prices had been exposed. The Air Force subsequently issued a revised solicitation, but award under that solicitation has been withheld pending resolution of the instant protest.

Analysis

Although a contracting officer has broad discretion in canceling an invitation for bids, he must have a compelling reason to do so after bid opening. Defense Acquisition Regulation § 2-404.1 (1976 ed.). The fact that some of the terms of an invitation are in some way deficient does not, of itself, constitute a compelling reason to cancel. Our Office generally regards cancellation after opening as inappropriate when other bidders would not be prejudiced by an award under the ostensibly deficient solicitation, Hild Floor Machine Co., Inc., B-196419, February 19, 1980, 80-1 CPD 140, and when such an award would serve the actual needs of the Government. GAF Corporation, et al., 53 Comp. Gen. 586 (1974), 74-1 CPD 68. See also MAC Services, Ltd., 61 Comp. Gen. 205 (1982), 82-1 CPD 46.

Here, we conclude that the contracting officer did not have a compelling reason to cancel. First, it is not apparent why the contracting officer concluded that the failure of the inventory to differentiate between two models of gas and of electric air conditioners precluded evaluation of bids on an equal basis. The mere fact that the inventory combined two identified models of comparable equipment cannot be said to have created an ambiguity, since bidders were clearly apprised of the fact that the quantities were so combined. It may be that separately identifying the quantity of each model would have permitted bidders to more precisely estimate their costs when preparing their fixed price for maintaining the ground support equipment. However, bidders can take such relatively minor uncertainties into account in computing their bids; the mere presence of risk in a procurement does not make the competition improper. Industrial Maintenance Services, Inc., B-207949, September 29, 1982, 82-2 CPD 296. Furthermore, the fact that no bidder complained leads us to believe that the small degree of uncertainty present here did not cause the bidders any problem.

With respect to the requirement that bidders indicate a unit price for the maintenance of each equipment type, there is no suggestion in the record that bidders were unable to calculate the required prices by specific model number with the information available. In addition, both the Air Force Logistics Command and the Headquarters, U.S. Air Force, concede that any variation in price resulting from this alleged defect would be slight and would not warrant cancellation of the solicitation.

Second, the record does not support the contracting officer's conclusions concerning the painting requirement.

Painting is included within that portion of the scope of work entitled "unscheduled maintenance," which is defined as "corrective maintenance that is required to maintain equipment serviceability between scheduled maintenance." While certain equipment breakdowns are required to be repaired within a set number of hours, the scope of work does not otherwise specify the timing of unscheduled repairs, services and maintenance required under the contract. However, we think the clear intent of the entire document is the maintenance of the ground support equipment in operation, on the flight line, throughout the year essentially on an as needed basis. To view the scope of work provisions otherwise would permit the contractor to drastically curtail, if not close down, flight line operations by taking all equipment requiring painting or other unscheduled maintenance at the same time, a result that hardly could be intended.

Thus, we think the only fair reading of the scope of work provision stating that the Air Force quality assurance personnel will designate those items of equipment to be painted is that the designation will take place throughout the year and that the contractor will be expected to respond appropriately throughout the year; we think it is unreasonable to believe that a bidder would have read this as meaning anything else. We note that there is no evidence in the record which suggests that any bidder was misled with respect to the frequency of painting. Accordingly, we think it is unreasonable to conclude that the scope of work permitted the contractor to postpone all painting until the last day of the contract.

With respect to the supposed misleading nature of the historical data in the solicitation, the record indicates that whatever ambiguity might have existed in this regard was eliminated at the bidders' conference. As reported in the materials provided to the bidders with solicitation amendment 0002, the following exchange took place at the conference:

"Q: Do the hours in technical exhibit 9 for unscheduled maintenance include painting/corrosion control?

A: Yes, however, present contract requires 3% painting. New solicitation requires 25% painting. . . ."

We believe this statement should have placed all bidders on notice that the historical data for unscheduled maintenance was based on a much smaller painting requirement than what was called for by the new procurement.

Third, we find no merit to the assertion that the solicitation was deficient because the inventory failed to include the two Ace air conditioners. The contracting officer originally concluded that adding the Ace air conditioners to the existing contract would "insuperably alter any bids submitted" because of each item's size and weight, about 16,000 pounds, and the consequent need to perform all maintenance on the items in the contractor's off-site facility.<sup>2</sup> According to the contracting officer, this would require an adequate towing vehicle, properly equipped in accordance with state law for towing loads in excess of 3,000 pounds over public highways. Consequently, the contracting officer believed he could not award a contract that included the two units unless the solicitation identified the Ace air conditioners and specified the need for an adequate "street legal" towing vehicle.

We find these reasons to be unpersuasive. Dyneteria points out that while the Ace air conditioners are large, they are only slightly larger than a full-sized station wagon and that the 12,000 square feet of building space available to the contractor on-site could accommodate them for all maintenance except repainting, which would occur only once during the 3-year life of the contract. In rebuttal, the contracting officer appears to concede that the on-site building could indeed accommodate these air conditioners but argues that it would create considerable congestion in the building and that it would require relocation of other equipment.

Relocating other wheeled items of ground support equipment, however, does not appear to be outside the scope of the contract. Since the contract covers more than 800 items of ground support equipment, it is apparent that the contractor frequently will be called upon to relocate items in and out of the on-site building. Although more than the usual equipment relocation might be necessary to accommodate the Ace units and avoid undue congestion in the building, in the total context of this contract such action would seem to be nothing extraordinary in terms of contractor effort and expense. Thus, towing to the off-site facility would not appear to be necessary to the extent envisioned by the contracting officer.

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<sup>2</sup>The solicitation required the contractor to maintain such a facility for painting, sandblasting, and "overflow maintenance."

Moreover, to the extent towing of the Ace air conditioners to the off-site facility is necessary, i.e., when repainting is necessary (which should only occur once for each air conditioner during the 3 year life of the contract) or if the contractor prefers to perform other maintenance at the off-site facility rather than in the on-site building, no unidentified special burden will be placed on the contractor. As noted earlier, the contracting officer reports that state law requires the use of an appropriately equipped towing vehicle for units weighing in excess of 3,000 pounds. The Ace units are not the only ones that weigh that much--the contracting officer's report indicates that at least one other type of ground support equipment listed in the original inventory weighs well in excess of 3000 pounds. Therefore, bidders were on notice that they would be required to tow such loads over public highways even without the listing of the Ace air conditioners. Consequently, we cannot agree that the air conditioners are so different from the other items of equipment that bidders would not be prepared to handle them should they be included in the contract.

Further, we note that the Ace air conditioners would add just 2 items to an existing inventory of 884 pieces of ground support equipment, and that maintenance of ground support equipment is just one of a number of services the contractor is to perform. Judging from the very limited differences among the bidders for maintaining the Ace air conditioners disclosed by the resolicitation, the relative order of the bids on the original solicitation would have remained the same if the Ace air conditioners had been included in the original solicitation.<sup>3</sup> Accordingly, we believe that adding these two items to the contractor selected under the original invitation would have only a trivial effect upon the basis for the original competition, and does not constitute an adequate basis for cancellation of that solicitation.

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<sup>3</sup>As noted earlier, bidders were required to provide maintenance prices for each item, on a monthly basis, to permit price adjustments to reflect changes in inventory during performance. The total of these monthly prices times the number of each item in inventory had to equal the total price bid, so bidders would have been forced to make specific price adjustment, not simply a management judgment, if the air conditioners had been added. These circumstances, together with the monthly prices actually bid for maintaining the Ace air conditioners on resolicitation, permit a precise calculation of the impact that adding the air conditioners would have upon the original bid prices, a calculation not possible in the ordinary case.

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Under the circumstances, we find that the contracting officer did not have a cogent and compelling reason to cancel the solicitation. Therefore, the protest is sustained. We are recommending to the Secretary of the Air Force that the contract be awarded to the low responsive, responsible bidder under the original solicitation.

*for* Milton J. Fowler  
Comptroller General  
of the United States