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DECISION

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

FILE: B-218281.2 **DATE:** April 8, 1985

MATTER OF: A to Z Typewriter Co.--Reconsideration

DIGEST:

GAO affirms decision that an IFB for indefinite quantity requirements, which listed estimated quantities for each item but failed to advise bidders expressly that for evaluation purposes unit prices would be multiplied by the estimated quantity for each item, should not have been canceled after bid opening where there is no persuasive showing that any bidder was misled into pricing the items differently than it would have otherwise.

The General Services Administration (GSA) requests reconsideration of our decision A to Z Typewriter Co.; Allen Typewriter Co., B-215830.2, B-215830.3, Feb. 14, 1985, 85-1 C.P.D. ¶ 198, sustaining A to Z Typewriter Co.'s (A-Z) protest that defects in the invitation for bids (IFB), under which A-Z received an award, failed to provide a compelling reason for GSA to terminate A-Z's contract for the government's convenience and resolicit. We recommended that A-Z's contract, and those of two other firms whose contracts GSA terminated for the same reason, be reinstated. GSA contends that our decision is inconsistent with decisions of this Office and the Claims Court.

We affirm our prior decision.

The IFB covered federal agencies' requirements for electric typewriter repair services in the National Capital Region, and for an annual maintenance call for each machine. The solicitation combined all the machines of one brand into a "group," and permitted bidders to offer a price for each service--expressed as a net percentage discount, plus or minus, from prices provided by the IFB--for any group in any of six geographical areas. The Method of Award clause stated:

"Award will be made in the aggregate by Group* for each service area to the responsible bidder who

> offers the lowest price in the form of a single percentage (applicable to all items in the group) as a Net, reduction from or addition to each of the preestablished prices shown for that group. Prices must be submitted for service call and for annual maintenance to be considered for an award in one specific group.
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> "*Group--all typewriter models, as specified, under a brand name."

For each service, the IFB provided estimated quantities of the government's requirements in each group within each geographic area. The IFB failed to explain, however, that GSA would determine the lowest aggregate price by adding the products of the offered price times the estimated quantity for each service (after application of the discount).

When GSA awarded A-Z a contract based on such an evaluation, Allen Typewriter Co. (Allen) filed a protest that the evaluation method was inconsistent with the Method of Award clause, and that Allen should have been awarded the contract based on merely adding the offered prices for each service.[1/] Allen alleged, without explanation, that it would have bid differently if the IFB had detailed precisely how bids would be evaluated. GSA subsequently terminated A-Z's contract in order to resolicit, after which A-Z filed its protest.

In its report on the protests, GSA conceded that the Method of Award clause was ambiguous as to how the lowest

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1/ For example, merely adding Allen's prices for one group in a geographical area--$14.70 per service call and $7.50 per maintenance call--yields $22.20, whereas the sum of A-Z's price--$6.65 per service call and $21.25 per maintenance call--yields a higher total, $27.90. Since the estimated requirements for service calls was 2,505, and only 25 for maintenance calls, multiplying the unit prices times the respective estimated quantities for each service results in A-Z's total projected costs to the government being less than one half of Allen's.

aggregate price would be calculated. In this regard, our prior decision noted that the solicitation was deficient in that it failed to state clearly that the evaluation of bids would include estimated quantities as a factor. We pointed out, however, that the mere fact an IFB is deficient does not preclude a valid award if the award would meet the government's needs (of which there is no question in this case) and not prejudice the competition.

We held that Allen was not prejudiced by the award to A-Z since the invitation provided bidders with estimates of the government's anticipated requirements, and Allen did not make a persuasive showing that it was misled into computing its prices without reference to those estimates. Because pertinent procurement regulations require a "compelling reason" to cancel an IFB after bids have been opened, Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.404-1 (1984), we stated that a finding of prejudice based only on a bidder's self-serving allegation that it would have bid differently would undermine the integrity of the competitive bidding process by creating an auction after prices had been exposed. Further, we pointed out that any firm submitting a bid that was properly balanced with respect to whether the price for each item legitimately carried its share of the cost of work, had to take the estimated quantities of the government's anticipated requirements into account. We therefore recommended reinstatement of the contract.

GSA argues, as a basis for reconsideration, that our decision is inconsistent with prior decisions of this Office and the Claims Court. From our Office, GSA offers Allied Container Mfg. Corp., B-201140, Mar. 5, 1981, 81-1 C.P.D. ¶ 175, as being on point.

In that case, an IFB to provide the government's indefinite quantity requirements for, among other things, four items of packing and delivery services, required a bidder to offer a total aggregate amount based on the addition of unit prices, and stated that the basis for award would be the lowest aggregate total. Adding the unit prices of Allied Container's bid yielded a total of $81 as compared to $653.60 offered by a competitor. The government nonetheless computed the lowest price by multiplying the unit prices times a portion of the single monthly estimate

provided by the IFB for all four items with no indication what part of the total related to each or any of the four items. Under this method, not provided for in the IFB, Allied Container's total price was $78,000 compared to $9,200 for the competitor, who was awarded the contract.

GSA points out that we found the IFB defective, and recommended termination of the contract and resolicitation under an IFB that provided for evaluation on the basis of the government's estimated requirements. Specifically, we held that the IFB encouraged unbalanced bidding and thus did not assure an award at the lowest cost to the government, since there was no indication that unit prices would be applied to estimated quantities to determine the low bid, and additionally, "there was no breakdown of the estimate for delivery services from which the bidders could know what the estimated volume was for each of these delivery items."

Further, GSA cites Northern Virginia Van Co. v. United States, 3 Cl. Ct. 237 (1983), for the proposition that where bidders have different, but equally reasonable understandings of the IFB's listed evaluation methodology, it is improper to prefer one bid over the other, and the contracting agency's proper recourse is to cancel the IFB and resolicit using a clarified invitation. That decision involved an IFB to provide the government's requirements for four items of transportation and related moving services listed as "Vehicle w/Driver," "Vehicle w/Driver and one Laborer/Helper," "Laborer/Helper," "Crew Leader (Foreman)," together with estimates of the average number of personnel that would be required for each line item. The IFB required bidders to offer prices for each item on the bid schedule and warned that entries of "0," "No charge," and the like would be considered nonresponsive. Regarding the method of award, the solicitation provided for multiplying the unit prices times the estimated quantities and adding the resulting extensions.

The contracting officer proposed to reject the bids of the first and second lowest bidders under this method, however, because each had submitted minimal prices ($.01 or $.10) for the first item while inflating the prices for Laborer/Helper (in comparison to the prices offered by other

bidders), and to award the contract to the third lowest bidder. The contracting officer was concerned that an award to either of the two lowest bidders would be much more costly if the government's actual requirements proved more labor intensive than the estimated requirements.

The court ruled that the contracting officer could not award a contract under different criteria than the IFB provided, even for the purpose of avoiding the possibly costly consequences of unbalanced bidding. The court went on to hold that the agency could cancel the IFB, however, since it was apparent that bidders did not have a common understanding of the clause prohibiting no-charge offers: some bidders understood the clause to prohibit unbalanced bidding, whereas others did not. The court, finding both interpretations reasonable, ruled that it would be unfair to prefer the low bid under one interpretation over the low bid under the other.

We do not believe that either decision applies to the current case. The Allied Container decision, unlike the present case, involved a solicitation that, by not containing estimated quantities for each item, failed to provide a common basis for competition. Estimated quantities are essential to enable bidders for a requirements contract to prepare reasonable, intelligent bids, and to ensure an award at the lowest total cost to the government. Air Life, Inc., B-214823, Oct. 30, 1984, 84-2 C.P.D. ¶ 478.

The Claims Court's Northern Virginia Van Co. decision has nothing to do with the issue of whether an IFB that contains estimated quantities, but no express statement that unit prices will be extended by those quantities, should be canceled. In fact, the solicitation in that case clearly explained that unit prices would be extended for evaluation purposes. Rather, the Claims Court decision involves a situation where it was apparent that bidders lacked a common understanding of the ground rules for unbalanced bidding, and some bidders reasonably computed their bids anticipating an evaluation on one basis while others did so on another basis. The very unbalanced nature of the two low bids, which included only nominal prices for one item, attested to the fact that not only did bidders have different understandings of the ground rules, but they computed their prices differently as a result.

This last circumstance is what is conspicuously lacking in the current case; there is no evidence, aside from the protester's self-serving, after-the-fact allegation, that Allen misunderstood the actual basis for evaluation or that, if the firm did so, Allen would have priced the services any differently if it had understood the evaluation method. We believe that such evidence would be essential to establish that competition had been prejudiced so as to provide a reasonable basis for determining that a "compelling reason" existed to terminate A-Z's contract and, in effect, cancel the solicitation. See Tennessee Valley Service Co.--Reconsideration, B-188771, Sept. 29, 1977, 77-2 C.P.D. ¶ 241, cited in our prior decision.

We recognize that a contracting officer has broad discretion to reject all bids and readvertise, and we will not question a decision to cancel where the contracting officer had a reasonable basis to determine that a compelling reason existed to do so. See Dyneteria, Inc., B-211525.2, Oct. 31, 1984, 84-2 C.P.D. ¶ 484. We further recognize that under some circumstances the possiblity of prejudice to bidders and potential bidders may provide a sufficient basis to cancel, for example, where the description of work is ambiguous so that it is possible that firms had materially different understandings of the work involved. See M. Steinthal & Co. v. Seamans, 455 F.2d 1289 (D.C. Cir. 1971). Under the circumstances of this case, however, we believe there exist factors that render the possibility of prejudice unlikely--namely that, as stated in our prior decision, the solicitation contained estimated quantities, and any bid properly allotting the actual costs of each service to the unit prices had to take the estimates into account. Considering these factors, we believe the damage to the competitive bid system of canceling and resoliciting after each bidder has learned his competitor's price outweighs the possibility of prejudice to a bidder where there exists no persuasive evidence that any bidder in fact was misled by the deficient Method of Award clause. See American Mutual Protective Bureau, 62 Comp. Gen. 354 (1983), 83-1 C.P.D. ¶ 469; Tennessee Valley Service Co.--Reconsideration, B-188771, supra.

Finally, we point out that in addition to the Method of Award clause, which itself was ambiguous regarding how the lowest aggregate price would be determined, the solicitation

contained the standard clause advising bidders that the government would award a contract to the bidder whose bid was most advantageous to the government, price and other factors, specified elsewhere in the solicitation, considered. FAR, 48 C.F.R. § 52.214-19. Our Office consistently has interpreted such language to require an award on the basis of the most favorable cost to the government measured by the total work to be awarded. E.g., Square Deal Trucking Co., Inc., B-183695, Oct. 2, 1975, 75-2 C.P.D. ¶ 206, cited in our prior decision. We believe a strong argument can be made that the language is not reasonably susceptible to an interpretation that an award will be based on the mere sum of unit prices without regard to how often the priced services will be required and the resulting advantage or disadvantage to the government of the unit prices. This is another factor which negates the likelihood of prejudice to bidders.

GSA thus has failed to identify any material errors of law or fact that would warrant reversing or modifying our prior decision that, since there is no persuasive evidence that bidders were prejudiced, the IFB's deficient Method of Award clause in itself did not provide a compelling reason to cancel the solicitation after bids had been opened and awards made. We affirm our decision.

Harry R. Van Cleve
for Comptroller General
of the United States