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DECISION



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

FILE: B-218014.3

DATE: April 24, 1985

MATTER OF: Energy Efficient Improvements

DIGEST:

Cancellation of solicitation is not justified by need to make changes to a specification if offerors were not prejudiced by the defect and the government's needs would be met by making award to the low bidder.

Energy Efficient Improvements (EEI) protests the cancellation of invitation for bids (IFB) F32605-84-B-0069 issued by Grand Forks Air Force Base, North Dakota. EEI contends that the IFB should not have been canceled and that, as the low bidder, it should have received the award. We sustain the protest.

The IFB was issued August 17, 1984 for "house doctoring" of 300 family housing units. "House doctoring" refers to the process of locating and repairing air leaks in buildings to reduce energy consumption. The amount of leakage is measured by installing a blower (known as a "blower door") in a doorway and measuring the air flow required to achieve a specified pressure difference between the building and outside air.

EEI submitted the lowest of six bids received. EEI's bid was treated as nonresponsive, however, because Air Force technical personnel determined that the bid did not meet a requirement in section 1, paragraph 5, of the IFB technical provisions. That section, entitled "Blower Door Calibration and Calibration Curves," states in part that "the calibration shall be as set forth in ASTM Standard Practice E779-81, Annex A3, paragraph A3.3" (Annex A3), which describes test methods for measuring leakage and contains instructions on blower door calibration. Offerors were to submit calibration curves prior to award.

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As indicated by data EEI submitted prior to award, the protester uses a blower door design that differs in some respects from that which the Air Force anticipated when it drafted the IFB. The contracting officer determined that EEI's bid was nonresponsive on the basis that the Annex A3 procedures apply only to blower doors using a fan for which the fan speed is measured. Since EEI offered a door using a calibrated flow measuring nozzle rather than a calibrated fan, the contracting officer reasoned that EEI could not comply with the IFB requirements. The agency's technical personnel, however, also concluded that EEI's calibration method was a reliable alternative to the use of a calibrated fan. Based on this finding, the contracting officer considered the IFB to be unduly restrictive of competition and decided to cancel the solicitation. By letter of January 17, 1985, the contracting officer informed EEI that the IFB had been canceled; EEI then protested to our Office.

According to EEI, its bid was responsive. EEI contends the Air Force rejected its bid due to an agency level protest filed by the second low bidder, which EEI says was untimely. Characterizing Annex A3 as allowing alternative calibration methods, EEI says the solicitation was not unduly restrictive and should not have been canceled. EEI notes that six bids were received under the IFB and states that awards have been made at many other Air Force facilities using the same technical specifications regardless of the calibration method proposed.

A solicitation may be canceled after bid opening only when a compelling reason for the cancellation exists. Deere & Company, B-206453.2, Nov. 1, 1982, 82-2 CPD ¶ 392. When a specification requirement is unduly restrictive, inadequate or ambiguous, its presence can constitute a compelling reason to cancel a solicitation. Commercial Envelope Manufacturing Company, Inc., B-213272, Feb. 15, 1984, 84-1 CPD ¶ 206; Johnson & Wales College, B-199293, Apr. 8, 1981, 81-1 CPD ¶ 266. However, the fact that the terms of a solicitation are deficient in some way does not by itself constitute a compelling reason. North American Laboratories of Ohio, Inc., 58 Comp. Gen. 724 (1979), 79-2 CPD ¶ 106. A compelling reason exists only where award under the defective solicitation would prejudice other bidders and such an award would not serve the actual needs of the government. Twehous Excavating Company, Inc., B-208189, Jan. 17, 1983, 83-1 CPD ¶ 42.

Here, we conclude that the contracting officer did not have a compelling reason to cancel. In this regard, the contracting officer misclassified the Annex A3 requirement, and thus, treated EEI's post-bid opening submission as a matter of responsiveness.

EEI's bid cannot be nonresponsive because EEI took no exception in its bid to any of the requirements stated in the IFB. The test for responsiveness is whether the bid as submitted is an offer to perform, without exception, the exact thing called for in the IFB, so that upon acceptance, the contractor will be bound to perform in accordance with all the terms and conditions of the IFB. 49 Comp. Gen. 553, 556 (1970). Unless something on the face of the bid, or specifically a part of it, limits, reduces, or modifies the bidder's obligation to perform in accordance with the terms of the invitation, the bid is responsive. Id.

As indicated, the contracting officer's determination was based on information that the Air Force requested and EEI furnished after bid opening. The Air Force's action was consistent with the IFB blower door calibration clause, which requires fan calibration data to be submitted before award. By requiring the data after bid opening, however, the Air Force treated the data as necessary to determine the vendor's ability to perform, i.e., to determine responsibility, which may be determined on the basis of information submitted after bid opening. See Astronautics Corporation of America, B-216014, Dec. 13, 1984, 84-2 CPD ¶ 663.

Viewed in this light, there was no reason why the Air Force could not have accepted EEI's bid. Where a requirement does not relate to the responsiveness of a bid, an agency may accept less than literal compliance with the requirement if the agency reasonably determines based on the information submitted that the bidder is offering an equivalent acceptable approach and has demonstrated its ability to perform. Johnson & Wales College, supra, B-199293. Since Air Force technical personnel concluded that EEI's method of calibration was essentially equal to the method specified and would meet the agency's needs, the bid should not have been rejected. Further, while the solicitation provisions regarding the calibration method were not clearly written and should be amended in future solicitations, the agency received six bids in response to the solicitation. At least one of the bids was

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based on the use of nozzle calibration. The differences in bid prices does not appear to be explained by any difference in the calibration method used. Thus, it does not appear that the solicitation restricted the field of competition and award may be made under it without prejudice to any of the other bidders. See Patterson Pump Company, B-216133; B-216778, Mar. 22, 1985, 85-2 CPD
¶ _____.

Consequently, since there was no compelling reason to cancel the IFB, we recommend that the canceled IFB be reinstated and award be made to EEI, the low bidder, if otherwise appropriate.

The protest is sustained.

Larry R. Van Cleave
for Comptroller General
of the United States