

Uguzarcan



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Display Sciences, Inc.—Request for Reconsideration

File: B-222425.2

Date: August 26, 1986

DIGEST

1. A bidder who contends that its brand name product is in fact responsive to a brand name specification, even though the brand name literature misdescribes the brand name product, may be considered an interested party to challenge the propriety of an IFB cancellation.
2. An IFB based on a brand name specification is properly canceled where the contracting agency intends to resolicit bids under a generic specification that will be drafted to permit enhanced competition.
3. The propriety of an agency's determination to cancel a solicitation must be judged in light of all pertinent factors, including those not specifically cited in the cancellation notice.

DECISION

Display Sciences, Inc. (Display), requests that we reconsider our decision in Display Sciences, Inc., B-222425, July 9, 1986, 86-2 C.P.D. ¶ ____, wherein we dismissed Display's protest of the cancellation of invitation for bids (IFB) No. DAHA90-86-B-0001 issued December 30, 1985, by the National Guard Bureau Contracting Support Office for the procurement of video cassette projectors on a "brand name or equal" basis. In our July 9 decision we held that Display was not an "interested party" under our Bid Protest Regulations, 4 C.F.R. § 21.1(a) (1986), to object to the cancellation of the solicitation where it had submitted a nonresponsive bid so that it would not have been entitled to award even if the solicitation had not been canceled.

We find that Display may be considered an interested party; however, we deny the protest.

Our determination in the July 9 decision that Display's bid was nonresponsive was based upon its having submitted with its bid its current descriptive literature on the Display Sciences Model AV50S projector which showed that the model AV50S projector which it offered had a picture size adjustable from 25" to 66" measured diagonally whereas the solicitation required that the picture size be adjustable up to 70" measured diagonally. We held that Display's bid was nonresponsive

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because the current descriptive literature which it had submitted on an unsolicited basis indicated that the equipment offered did not conform to a material requirement of the IFB. Minnesota Mining & Manufacturing Co., B-212004, Nov. 17, 1983, 83-2 C.P.D. ¶ 578. Although in its protest Display advised that subsequent to bid opening it offered to provide the contracting officer with evidence, including prior descriptive literature, which shows that the model AV50S projector not only meets but exceeds the solicitation's requirement for a picture size adjustable up to 70" measured diagonally, we cited our decisions in Devault Manufacturing Co., B-195959, Jan. 7, 1980, 80-1 C.P.D. ¶ 18, and L.H. Morris Electric Inc., B-219732, 85-2 C.P.D. ¶ 392, for the well settled proposition that a bidder may not explain the meaning of a nonresponsive bid after bid opening. As a result, we concluded that Display was not an interested party to challenge the IFB cancellation.

On reconsideration, we agree with Display that its protest should not have been dismissed under our interested party rule. It is generally true that a nonresponsive bidder is not an interested party to challenge an IFB cancellation. We nevertheless should not have dismissed Display's protest, since the protester had argued that its offered model was in fact responsive to the picture size requirement and the contracting officer did not reach the question of whether Display's bid was responsive. In any event, even if we now were to agree with Display that its bid was responsive despite the discrepancy between its literature and the IFB description of the Display unit, we think the contracting officer's determination to cancel the IFB was reasonable.

Because of the potential adverse impact on the competitive bidding system of cancellation after bid prices have been exposed a contracting officer must have a compelling reason to cancel an IFB after bid opening. Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.404-1 (1985). Whether the particular circumstances warrant cancellation is for the determination of the contracting officer, whose decision will not be disturbed by our Office unless it was arbitrary or unreasonable. Emerald Maintenance, Inc., B-219453.2, Dec. 10, 1985, 85-2 C.P.D. ¶ 641.

In this case, a total of seven bids had been received under the instant IFB, ranging in price from \$666,816 to \$993,324, with Display's bid of \$881,820 being second highest. The contracting officer noted that the bidders either had offered the Display brand name unit or a Sony projector television with a VHS video cassette recorder (VCR) substituted for the original equipment manufacturer's Beta Max VCR unit. He found that the Sony equipment did not meet all the salient characteristics of the Display unit, which left only those bidders offering the Display unit. In addition, he found other problems with the brand name bids.

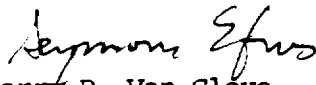
The contracting officer then concluded that the brand name specification overstated the government's needs and that competition would be enhanced if the requirement were solicited using a generic specification that

stated the government's actual needs. He decided to cancel the solicitation and to revise the specification prior to a resolicitation.

We see no reason to question the contracting officer's cancellation action. Clearly, the contracting officer's desire to obtain enhanced competition for these units by loosening the specification, constitutes a valid reason for canceling the IFB. FAR, 48 C.F.R. § 14.404-1, which permits a cancellation of bids in the best interest of the government. Although Display argues that its bid would have served the government's needs, it was the contracting officer's considered judgment that lower prices would be obtained if the requirement were resolicited using a revised specification.

Display has also argued that we should not consider this ground as justifying the cancellation since it was not asserted in the cancellation notice. That notice stated that the IFB had been canceled because the specification was defective based on the brand name literature furnished with Display's bid. In our opinion, the propriety of the cancellation must be judged in light of all pertinent factors, including those not specifically stated to the bidders. Moreover, we think the statement in the notice that the specification was defective reasonably conveys the basis for the agency's action.

Protest denied.

for 
Harry R. Van Cleve
General Counsel