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The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: R. S. Data Systems, Inc.

File: B-225437

Date: March 11, 1987

## DIGEST

Agency has a compelling reason for cancellation of invitation for bids after bid opening when it fails to include Service Contract Act provisions, and the omission may prejudice bidders with regard to their prices for option years.

## DECISION

R. S. Data Systems, Inc., protests the cancellation, after opening, of invitation for bids (IFB) No. DAAD05-86-B-5980, issued by the United States Army Test and Evaluation Command, Aberdeen Proving Ground, Maryland. The solicitation, a 100-percent small business set-aside, covered keypunch services for the U.S. Army Publications Center in Baltimore. R. S. Data asserts that the Army lacked a compelling reason to cancel the IFB after bid opening, in violation of the procurement regulations, and did so solely to prevent it from obtaining the award.

We deny the protest.

The record indicates that during the evaluation of 28 bids received and opened on September 16, 1986, the price analyst discovered that the solicitation did not incorporate by reference three clauses generally required for service contracts.<sup>1/</sup> The contracting officer confirmed the omission

<sup>1/</sup> The omitted clauses were "Contract Work Hours and Safety Standards Act--Overtime Compensation," Federal Acquisition Regulation (FAR), 48 C.F.R. § 52.222-4 (1985); "Service Contract Act of 1965, as Amended," Defense Acquisition Regulation (DAR), § 7-1903.41(a) (DAC 76-49, Jan. 1984); and "Fair Labor Standards Act and Service Contract Act - Price Adjustment (Multi-Year and Option Contracts)," DAR § 7-1905(b) (DAC 76-20, Sept. 1979). The agency advises us that it uses the DAR clauses in solicitations for services because Service Contract Act coverage is not provided in the current FAR. See Item VII, FAC 84-1, Mar. 1984.

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and determined that it created a reasonable doubt as to whether all bidders had been bidding on an equal basis. The contracting officer therefore canceled the solicitation on October 7, 1986.

The protester argues that the clauses can be inserted into the contract after award through an administrative modification. Moreover, the protester contends, as standard clauses, they are recognized by all bidders to be inherent in any service contract, particularly where, as here, the solicitation did include a Department of Labor wage determination. Thus, according to the protester, the failure specifically to identify these clauses in the solicitation does not in any way change the Army's actual needs or impair the validity of the competitive procurement. The protester concludes that the cancellation violated the Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.404-1 (1986), which requires that the government have a compelling reason to cancel an IFB after opening because of the potential adverse impact on the competitive bidding system of cancellation after prices have been exposed.

The solicitation required bid prices for a base period of 1 year and four 1-year options, all of which were to be evaluated. The Army states that although the solicitation included a wage determination for the first year, it was not possible to determine whether bidders had ignored the wage determination because the service contract clauses had been omitted. In addition, some bidders had escalated their option year prices, although the omitted price adjustment clause prohibits this.

The protester correctly states that, as a general rule, a defective solicitation need not be canceled so long as the government's needs will be met by an award under it and no bidder is prejudiced. Here, the government's needs arguably could have been met, since the omitted Service Contract Act provisions would be incorporated in any awarded contract under the "Christian doctrine." See Linda Vista Industries, Inc., B-214447, et al., Oct. 2, 1984, 84-2 CPD ¶ 380, citing G. L. Christian & Assocs. v. United States, 160 Ct. Cl. 1, 312 F.2d 418, motion for rehearing denied, 160 Ct. Cl. 58, 320 F.2d 345, cert. denied, 375 U.S. 954 (1983).

We think, however, that there was a clear possibility of prejudice to bidders which makes the cancellation here proper. Some firms may have assumed the application of the Service Contract Act and bid on that basis, while others may have not made such an assumption. The fact that some bidders

did not comply with the omitted "Fair Labor Standards Act and Service Contract Act--Price Adjustment" clause in pricing option years indicates that at least those bidders may not have been aware of the Service Contract Act's application to the contract. Under these circumstances, it is irrelevant that the protester, the second-low bidder under the defective solicitation, believed it was in line for award after the low bidder withdrew. Compare Linda Vista Industries, Inc., supra (omission of mandatory value engineering clause does not affect evaluation of bids and therefore does not require cancellation and resolicitation).

Moreover affording protection to service workers and thereby furthering the purposes of the Service Contract Act is a "compelling reason" to cancel an IFB after bid opening in order to resolicit, incorporating both the wage determinations and contract clauses relevant to the Service Contract Act. NonPublic Educational Services, Inc., B-207751, Mar. 8, 1983, 83-1 CPD ¶ 232. While the IFB here included a first-year wage determination, it did not include a multitude of obligations imposed upon contractors by the omitted clauses. For example, the wage determination alone does not require compliance by subcontractors or address the contractor's obligation to adjust wages and fringe benefits during option years. Accordingly, once the omission of the clauses was brought to the contracting officer's attention, the contracting officer was acting within the scope of his authority in canceling the IFB. See also DWS, Inc., B-217199, Aug. 30, 1983, 83-2 CPD ¶ 287.

To the extent that R. S. Data alleges that the Army canceled the solicitation merely to avoid making award to it, the protester has presented no probative evidence to support its allegation. We will not attribute prejudicial motives to contracting officials on the basis of inference or supposition, and we deny the protest on this basis. Because the original solicitation was properly canceled, there is no legal basis for R. S. Data to recover the costs of either preparing its bid or pursuing this protest.<sup>2/</sup> 4 C.F.R.

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<sup>2/</sup> In a related protest to the Army, R. S. Data requested that no award be made under the resolicitation, request for proposals No. DAAD05-87-R-5026, issued November 25, 1986, until our resolution of this protest. We note that the Army has postponed indefinitely the due date for proposals under the new solicitation, which incorporates the omitted Service Contract Act clauses.

§ 21.6(d) (1986); Cellular Prod. Serv., Inc., B-222614,  
July 3, 1986, 86-2 CPD ¶ 32.

The protest is denied.

*for* *Seymour Efros*  
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General Counsel