



The Comptroller General
of the United States

Washington, D.C. 20548

Westfall

Decision

Matter of: AWD Mehle GmbH
File: B-225579
Date: April 16, 1987

DIGEST

1. Protest of cancellation of request for proposals after disclosure of low offeror's price is denied where other offerors' repeated questions concerning solicitation quantities and wide disparity in the prices received called into question the accuracy of the agency's estimates. Where there is a material discrepancy between the solicitation's estimates and actual anticipated needs, award under that solicitation is improper.
2. Solicitation for estimated quantity of work which provides that the contractor will be responsible for performing all of the work required whether or not the actual quantity exceeds the RFP estimate but does not ask for unit and extended prices contains inappropriate pricing format since offerors will be encouraged to factor into their prices contingencies to cover the possibility that they may be required to perform work in excess of the estimated quantities.

DECISION

AWD Mehle GmbH protests the Air Force's cancellation of request for proposals (RFP) No. F61521-86-R-2334 for the replacement of windows and the repair of exterior building surfaces for 29 apartment buildings on Ramstein Air Base. Mehle argues that the Air Force did not have a reasonable basis for canceling the solicitation. We deny the protest.

The RFP asked offerors for a lump sum price on each of two projects: RAM 86-0012B for the replacement of windows and RAM 86-0012C for the maintenance of exterior surfaces. The solicitation also requested a total price for both projects. The specifications described the tasks to be performed and the estimated quantity of work under each task. For example,

038624 / 132725

item 2.02 provides for the removal and replacement of 777 windows. The solicitation cautioned that the quantities listed were merely estimates. There was no provision for the insertion of a unit price for any of the items making up the two projects. Award was to be made to the firm offering the lowest total price for the two projects.

Fourteen initial offers were received in response to the RFP; Mehle's was the lowest. Due to the wide range of prices received, the contracting officer states that he suspected that the low offers might be mistaken and requested price breakdowns from the three low offerors. In examining the price breakdown of the second low offeror, the contracting officer discovered that its estimates of the amount of work to be performed on a number of the tasks differed from the government's estimates. The offeror explained that based on its own experience of working on the Ramstein apartment buildings, it knew that the government figures were incorrect. The Air Force reexamined its own estimates in light of these discussions and issued a solicitation amendment that deleted one task and reduced the quantity estimate for another by 50 percent.

After discussing these changes with the offerors, the Air Force requested best and final offers. Of the 11 offerors who responded, 10 reduced their prices. Mehle increased its price, but remained the low offeror.

After the best and final offers had been received, another offeror contacted the contracting officer and alleged that the specifications still contained some discrepancies. Although some agency personnel concluded that the estimates were correct, the contracting officer subsequently decided that the repeated allegations regarding discrepancies in the quantities indicated that offerors did not have a common understanding of the scope of the project. According to the agency, the increase in the low offeror's price also concerned the contracting officer since the solicitation had been amended to decrease quantities. He was also alarmed by the variation in the prices received (4,320,000 DM-5,875,099 DM). Thus, he again requested price breakdowns from the three low offerors. Based on these breakdowns, he concluded that one or more of the offerors did not have a clear understanding of the project, and that further discussions would be necessary.

At this point, it was discovered that a letter stating that a contract had been awarded to Mehle and revealing that firm's total price had inadvertently been mailed to the other offerors. The contracting officer determined that the

continuation of discussions in the face of such a revelation would result in an auction and elected to cancel the RFP.

Mehle argues that the contracting officer did not have a reasonable basis to cancel the RFP. The protester says that the RFP did not contain any deficiencies and questions the propriety of the contracting officer's reliance on comments from other offerors in determining that the solicitation contained defective estimates. The protester further complains that it is unfair for the agency to cancel the RFP and resolicit the requirement after its prices have been revealed.

Contracting agencies have broad discretion in determining when it is appropriate to cancel a solicitation. In a negotiated procurement the contracting officer need only have a reasonable basis for cancellation after receipt of proposals, as opposed to the "coherent and compelling" reason required for cancellation of a solicitation after sealed bids have been opened. Cadre Technical, Inc. et al., B-221430 et al., Mar. 14, 1986, 86-1 CPD ¶ 256. The standards differ because in sealed bidding competitive positions are publicly exposed as a result of the public opening of bids, while in negotiated procurements there is no public opening. Allied Repair Service, Inc., B-207629, Dec. 16, 1982, 82-2 CPD ¶ 541. The question therefore arises as to which standard should apply in a situation such as this where an offeror's price has been exposed after receipt of proposals in a negotiated procurement. We need not resolve this issue here because we believe that under either test the cancellation was justified.

The agency reports that the contracting officer determined that the repeated questions raised by offerors concerning solicitation quantities called into question the accuracy of the estimates included in the RFP.^{1/} Further, the contracting officer explains that he was concerned about the disparity in the prices received both in the initial and in the best and final offers and by the fact that the lowest best and final offer exceeded the revised government cost estimate by over 800,000 D.M. In an attempt to alleviate

^{1/} Mehle objects to the contracting officer's reliance on what the protester characterizes as untimely protests in canceling the RFP. The source of the information that causes the agency to conclude that a solicitation is deficient and should be canceled is not relevant as long as the reasons cited meet the standard for cancellation.

the prejudice to the low offeror caused by the exposure of its total price, the agency intends to resolicit the requirement so that separate awards can be made for the window work and the other outside maintenance work.

While it is indeed unfortunate that the protester's price was revealed, it is nevertheless clear that the solicitation was deficient.^{2/} First, although the agency characterizes the solicitation as ambiguous, we think that in fact the problem is that the solicitation's quantity estimates did not precisely express the agency's actual replacement and repair needs. We have held that where there is a material discrepancy between the solicitation estimates and the actual anticipated needs, no award should be made based on those defective estimates. N.V. Philips Gloellampenfabriken, B-207485.3, May 3, 1983, 83-1 CPD ¶ 467.

Further, we think the problem was compounded by the pricing format chosen by the agency. The RFP asked for a lump sum price for two general projects, each consisting of numerous items. The items represented different tasks (replacement of downspouts, handrails, windows, etc.) and for each task the RFP included an estimated quantity (replace 200 windows, 1,634 downspouts, etc.). The RFP advised offerors that the contractor would be responsible for performing all of the work required whether or not the actual quantity exceeded the RFP estimate. There was no provision for the inclusion of a unit price for any of the listed items. In the absence of some compelling reason, we think that a solicitation of this type should include estimates of the amount of work expected and should provide for unit and extended prices. Offers should be evaluated based on the extended prices. Further, the solicitation should state that payment will be based on the unit prices offered multiplied by the actual quantity of work required. This format will help prevent offerors from including in their prices large contingencies to cover the possibility that they may be required to perform work greatly in excess of that listed in the RFP for the fixed price offered. This problem is exacerbated where, as here, the estimates included in the RFP are suspect.

^{2/} The protester argues that since its price was revealed the agency should make award to it based on its low offer. While it is often appropriate where an offeror's price is revealed to make award on the basis of proposals already received, where, as here, the solicitation is flawed, such an award is not proper. AAA Engineering & Drafting, Inc., B-202140, July 7, 1981, 81-2 CPD ¶ 16.

Based on the reasons cited by the agency along with our concern regarding the RFP's pricing format, we think that a compelling reason exists to cancel the RFP and resolicit the requirement. We recommend that in resoliciting the requirement the agency consider revising the pricing format both to encourage the submission of the lowest possible prices and to alleviate the prejudice to the protester caused by the exposure of its price.

The protest is denied.

Harry R. Van Cleve

Harry R. Van Cleve
General Counsel