



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Barton Nelson, Inc.

File: B-225733

Date: May 7, 1987

DIGEST

1. Agency had compelling reason to cancel invitation which failed to include minimum product performance requirements and quality standards since award on the basis of a solicitation which did not include these requirements and standards could result in the agency's accepting a product with significant performance deficiencies.
2. There is no authority to permit the low bidder under a properly canceled invitation for bids an exclusive opportunity to meet the revised requirements of the agency without resolicitation.
3. The Small Business Administration's issuance of a Certificate of Competency requires that the contracting agency not require the bidder to meet any other standards of responsibility, but does not compel the government to make an award if specifications are found defective.

DECISION

Barton Nelson, Inc., a small business, protests the General Services Administration (GSA) decision to cancel, after bid opening, items 3-17 for repositionable writing paper of invitation for bids (IFB) No. 2FY-HOV-A-A4062P. Repositionable writing paper is writing paper which has an adhesive bond so that it can adhere to a variety of surfaces and which can be "repositioned", that is, adhere to a second surface after its first use. We deny the protest.

The solicitation requested bids for various types of business machine paper and three sizes of repositionable writing paper. Following a determination that the solicitation lacked adequate quality assurance requirements for the repositionable paper, GSA decided to cancel the requirement. Specifically, the solicitation contained no minimum adhesion test for two of the three paper sizes solicited.

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Further, while the solicitation included an adhesion test for the larger size paper solicited, this test was found to be not stringent enough to insure that the agency would procure a satisfactory product. Also, the solicitation lacked any kind of repositionability test making it impossible to determine whether the paper could adhere to a second surface after its first use.

Barton Nelson maintains that more stringent performance requirements will not affect bid price and, therefore, any such changes should be considered minor. In this regard, the protester also argues that it should be given the opportunity to conform to any new performance requirements at its bid price.

Further, Barton Nelson points out that after GSA determined Barton Nelson to be nonresponsive, it referred the matter of Barton Nelson's responsibility to the Small Business Administration (SBA) for possible issuance of a Certificate of Competency (COC). Barton Nelson complains that after SBA issued a COC, GSA canceled the solicitation, thus rendering "the issuance of the COC meaningless." The protester concludes that the cancellation represents a bad faith effort to circumvent the SBA's authority to determine conclusively Barton Nelson's capability to perform the contract.

GSA reports that this type of paper previously had been procured on a "brand name or equal" basis; however, as more firms began manufacturing this paper, GSA sought to achieve greater competition by developing a technical purchase description (TPD) for repositionable paper. GSA explains that it has received numerous complaints (more than 40) from user activities concerning the paper GSA purchased in 1986 under this TPD, also used in the current solicitation. The user activities complained that the paper does not adhere to any surface for any length of time and cannot be repositioned. GSA states that the majority of these complaints were received after the issuance of this solicitation in October 1986. GSA further explains that investigation by technical personnel confirmed the user activities complaints. Therefore, the agency determined that several product performance requirements would have to be added to the current TPD as well as changes made to existing performance requirements to insure that GSA user activities would not be getting a defective product. In this regard, GSA states that even the larger size paper, which had a minimum adhesion test in the TPD, was found to be defective notwithstanding that this paper had satisfied that performance test. Based on these findings, GSA requested its national laboratory to develop a new TPD to include a more stringent minimum adhesion test for the larger size

paper and minimum adhesion tests for the two smaller sizes of paper and repositionability and accelerated aging tests for all three paper sizes. These new performance standards will be incorporated into the TPD and the requirement will be resolicited.

It is undisputed that contracting agencies have broad discretion in determining when it is appropriate to cancel a solicitation. Magnolia Inn, B-216607, Mar. 1, 1985, 85-1 C.P.D. ¶ 257. However, because of the potentially adverse impact of such a decision upon the competitive bidding system, a cogent and compelling reason must support a decision to cancel after bid opening. Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.404-1 (1986).

In this case, the record establishes that the agency had a compelling reason to cancel. GSA canceled the solicitation after discovering that the solicitation TPD failed to include minimum product performance requirements, the lack of which could result in the acceptance of repositionable writing paper with significant performance deficiencies. The record indicates that in order to meet GSA user activities needs, minimum adhesion and repositionability requirements must be included in the solicitation to insure the paper is capable of adhering to various surfaces and can be repositioned after initial use as required. The protester does not argue that the inclusion of such performance standards in the solicitation are not necessary to insure acceptable product performance or that the solicitation, as issued, contains adequate quality assurance requirements. In fact, the protester admits that different manufacturers use very different types of adhesives for the paper. Thus, under the circumstances here, where award on the basis of a solicitation which does not include the agency's minimum requirements for a quality product could result in the agency's accepting defective supplies, GSA acted reasonably in canceling the solicitation. See General Aero Products Corp., B-213541, Sept. 18, 1984, 84-2 C.P.D. ¶ 310.

The protester argues that bid prices would not be affected by performance requirements and, therefore, any solicitation revisions concerning product performance must be considered minor, not justifying cancellation. Regardless of whether prices are affected by the anticipated revisions, as explained above, the agency acted reasonably in canceling the solicitation since award on the basis of deficient performance specifications would not meet the agency's needs. See General Aero Products Corp., B-213541, supra.

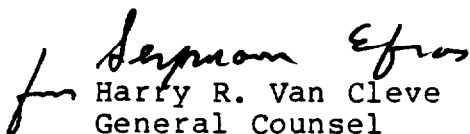
Concerning Barton Nelson's assertion that as low bidder it should be given the opportunity to conform to any new

solicitation requirements without a resolicitation, there is no authority to permit Barton Nelson, simply because it submitted the low bid on deficient specifications, an exclusive opportunity to meet the revised needs of the agency. See John C. Kohler Co., B-218133, Apr. 22, 1985, 85-1 C.P.D. ¶ 460; General Aero Products Corp., B-213541, supra.

Finally, with regard to Barton Nelson's contention that it was improper to cancel the solicitation after the firm had been issued a COC by SBA, the fact that the low bidder is issued a COC does not, in itself, compel the government to make an award under defective specifications, but only requires that the contracting agency not require the bidder to meet any other standards of responsibility if the contract is awarded. Integrity Management International, Inc., B-222405.2, Feb. 26, 1987, 87-1 C.P.D. ¶ 220; Intercomp Company, B-213059, May 22, 1984, 84-1 C.P.D. ¶ 540. Here, the needed changes to the solicitation all involved aspects of what the contractor would be required to provide under the contract and not additional elements of responsibility. Since the record provides a reasonable basis for GSA's decision to cancel the solicitation, we reject Barton Nelson's allegation that the cancellation was a ruse to circumvent SBA authority.

In this regard, the record supports GSA's position that pending the issuance of a COC to Barton Nelson, GSA was ready to award to that firm. The record shows that the agency initially believed a satisfactory product could be obtained by requiring only minor changes and that under these circumstances award to Barton Nelson would be appropriate. Only after GSA technical personnel completed their investigation of the causes of user activities complaints concerning paper previously procured under the same TPD used here, and reevaluated the performance requirements in the current TPD, did GSA determine that extensive solicitation revisions were necessary and cancel the solicitation.

The protest is denied.


Harry R. Van Cleve
General Counsel