

Van Schaik



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Bay Shipbuilding Corporation

File: B-231918

Date: September 30, 1988

DIGEST

Cancellation of invitation for bids (IFB) after bid opening was proper where agency reasonably determined that IFB did not provide clear and concise bid submission instructions so that four bids were submitted to the incorrect agency office.

DECISION

Bay Shipbuilding Corporation protests the Coast Guard's cancellation of invitation for bids (IFB) No. DTCG80-88-B-00027 for maintenance services on five 180-foot buoy tenders. We deny the protest.

The standard form (SF) 33 cover page of the IFB indicated in block 7 that the IFB was issued by the Coast Guard's Governors Island, New York office. With regard to the place for submission of bids, blocks 8 and 9 of the SF 33 indicated that hand-carried bids should be delivered to the New York office, while mailed bids should be sent to a designated Coast Guard office in Cleveland. Three amendments to the IFB subsequently were issued. Amendment No. 0001 deleted the Cleveland address for mailed bids in block 8, and stated that all bids should be addressed to the issuing office in New York. Amendment No. 0002 changed the bid opening date. Amendment No. 0003 extended the bid opening date again and made other changes to the IFB. In addition, amendment No. 0003 included a replacement SF 33 which incorporated the amended bid opening and time and new pagination but was identical to the one in the original IFB as far as the instruction that mailed bids should be submitted to the Coast Guard's Cleveland office is concerned. According to the Coast Guard, the insertion of the SF 33 with the two different addresses for submission of bids was an inadvertent error, and it actually intended that all bids be submitted to the New York office.

CAB438/136969

Four timely bids, including the protester's, and one late bid were submitted to the Coast Guard's New York office, while four other timely bids were submitted to the agency's Cleveland office. The bids received in Cleveland were not opened and were either forwarded to the New York office or returned to the bidders. Since the bid opening officer in New York was unaware at the time that bids had been submitted in Cleveland, the four timely bids received in New York were publicly opened. After bid opening, however, when the above circumstances became apparent, the contracting officer determined that cancellation of the IFB was clearly in the government's best interests under Federal Acquisition Regulation (FAR) § 14.404-1(c)(9), since the IFB "did not provide clear and concise instructions for bid submission." The contracting officer concluded that bidders submitted bids to the Cleveland office as a result of the third amendment to the IFB which inadvertently allowed submission of bids in two locations.

Bay argues that the cancellation was not justified and created an impermissible auction. In this respect, Bay maintains that bidders were unambiguously instructed by the IFB itself and by contracting officials at a pre-bid conference to submit their bids to the New York office and that bidders should not have been confused by the third amendment since it did not purport to change the bid submission instructions. Further, the protester contends that any bidder who was confused by the instructions should have sought clarification.

Because of the potential adverse impact on the competitive bidding system of cancellation after bid prices have been exposed, a contracting agency must have a compelling reason to cancel an IFB after bid opening. FAR § 14.404-1(a)(1). 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 is arbitrary or unreasonable. Display Sciences, Inc.--Request for Reconsideration, B-222425.2, Aug. 24, 1986, 86-2 CPD ¶ 223.

In our view, the fact that four bids were submitted to the Cleveland office indicates that a number of bidders were misled as to the agency's intended bid submission instructions. In addition, given that the final amendment to the IFB reinstated the two different addresses for submission of bids, we believe that those bidders reasonably concluded that mailed bids could be submitted to the Cleveland office, and were not required to seek further confirmation from the agency as to its intention. As a result, in light of the

mandate in the Competition in Contracting Act of 1984, 41 U.S.C. § 253(a)(1)(A) (Supp. IV 1986), that contracting agencies obtain full and open competition, we find that the agency acted reasonably in canceling the solicitation in order to enhance competition. See Aero Innovations, Ltd., B-227677, Oct. 5, 1987, 87-2 CPD ¶ 332. Further, where, as here, cancellation is in accord with governing legal requirements, contrary to the protester's contention, the agency has not created an impermissible auction by resoliciting. Emerson Electric Co., B-221827.2, June 4, 1986, 86-1 CPD ¶ 521.

The protest is denied.

for Seymour Efron
James F. Hinchman
General Counsel