

Ruppert



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Dictaphone Corporation

File: B-235888; B-236190

Date: September 25, 1989

DIGEST

Cancellation after bid opening of solicitation issued on a brand name basis is unobjectionable where agency concludes that tape recorders other than the brand name model will satisfy its minimum needs and it appears that resolicitation on a brand name or equal basis will enhance competition and result in cost savings to the government.

DECISION

Dictaphone Corporation protests the cancellation of invitation for bids (IFB) No. MDA903-89-B-0019, and the subsequent resolicitation of the requirement under IFB No. MDA903-89-B-0031, issued by the Army's Defense Supply Service-Washington for 700 hand-held tape recorders. Dictaphone contends that there was no compelling reason to cancel the IFB. We deny the protest.

The solicitation called for bids on a brand name only basis, specifying Sony model BM17 hand-held recorders. Although the IFB contained a statement of work (SOW) that required the recorders to function properly with Sony BM 75 transcribing unit, the requirements of the SOW were not described as salient characteristics, and the solicitation did not include "or equal" language or the "brand name or equal" clause required by the Department of Defense Federal Acquisition Regulation Supplement § 210.004 (DAC 88-1) when a brand name or equal procurement is intended. Nevertheless, the apparent low bid of Mid-Atlantic Industries, Inc. (at \$52,143), the second low bid of Harris Lanier (at \$70,644), and the third low bid of Dictaphone (at \$117,950), were for recorders other than the brand name, Sony model; two bidders offered the brand name model. As a result, the agency concluded that the structure of the IFB, which included an SOW even though a brand name procurement was intended, may have confused some bidders.

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Furthermore, the contracting officer learned after opening that recording units other than the Sony could be modified to assure compatibility with the agency's Sony transcribing units. In addition, the contracting officer discovered an ambiguity in the specified place of delivery which may have caused the late receipt of a bid, and also realized that the solicitation only allowed 24 days for the receipt of bids rather than the 30 days prescribed by the Federal Acquisition Regulation (FAR) § 5.203. Since the solicitation therefore appeared to be unduly restrictive of competition, and in view of the uncertainties created by the solicitation and the insufficient time allowed for receipt of bids, the contracting officer determined that compelling reasons existed to warrant cancellation. Upon learning of the ensuing cancellation, Dictaphone filed an agency-level protest, and when that was denied, filed there protests with our Office challenging the cancellation and the agency's subsequent resolicitation on a brand name or equal basis.

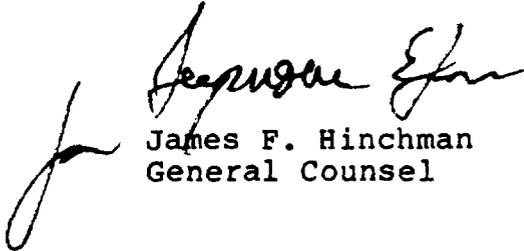
Dictaphone contends that the contracting officer lacked a compelling reason to cancel the IFB as required by FAR § 14.404-1(a)(1) for cancellation after bids have been opened. Dictaphone contends that the changes in the new IFB are merely clarifications, not revisions, and that award under the original solicitation would satisfy the government's needs. Dictaphone argues that the agency's allowance of 24 days rather than 30 days from the date of issuance for submission of bids was a minor error that did not result in prejudice to bidders. Further, Dictaphone argues that neither the apparent low nor second low bidders, is eligible for award.

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. FAR § 14.404-1(a)(1); Donco Indus., Inc., B-230159.2, June 2, 1988, 88-1 CPD ¶ 522. At the same time, however, the determination as to whether a compelling reason exists is an administrative one that we will not disturb absent a showing that it was unreasonable. Independent Gas Producers Corp., B-229487, Mar. 2, 1988, 88-1 CPD ¶ 217.

We find the agency's determination to cancel the original IFB unobjectionable. The solicitation called for Sony BM17 recorders. After bids were opened, however, the agency realized that it was not necessary to restrict the procurement to a brand name model only, since recorders other than the Sony could be compatible with the agency's Sony transcribing units and its minimum needs. We have previously recognized that a contracting officer's desire to

obtain enhanced competition by relaxing a material specification, Agro Constr. and Supply Co., Inc., 65 Comp. Gen. 470 (1986), 86-1 CPD ¶ 352, or his desire to take advantage of available cost savings by revising the solicitation, Security Storage & Moring Serv., Inc., B-229894, B-229906, Apr. 26, 1988, 88-1 CPD ¶ 407; Alden Electronics, Inc.-- Reconsideration, B-224166.2, Mar. 12, 1987, 87-1 CPD ¶ 277, may constitute compelling reasons to cancel an IFB after opening. Here, only two of five bids received were for the specified Sony recorders, and they were substantially higher (at least 164 percent) than the low, non-Sony bid. In these circumstances, we believe it was reasonable to cancel and resolicit on a brand name or equal basis to take advantage of the demonstrated potential for enhanced competition and cost savings to the government.^{1/}

The protest is denied.



James F. Hinchman
General Counsel

^{1/} In any case, notwithstanding its challenge to the acceptability of the two lower bids, it does not appear that Dictaphone is an interested party to protest the cancellation, as required by our Bid Protest Regulations. 4 C.F.R. § 21.1(a) (1989). Since we agree with the agency that the original solicitation was issued on a brand name only basis, Dictaphone's bid of a non-Sony recorder rendered it ineligible for award under that solicitation. HTP Enters., Inc., B-235200, Apr. 27, 1989, 89-1 CPD ¶ 418.