

Petrovits



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Ace-Federal Reporters, Inc.

File: B-237414

Date: January 31, 1990

DIGEST

Procuring agency's cancellation of invitation for bids (IFB) after bid opening is proper where agency reasonably determined that IFB improperly omitted requirement for bid and performance bonds which it reasonably found were necessary to ensure the continuous performance of essential stenographic services.

DECISION

Ace-Federal Reporters, Inc., protests the cancellation, after bid opening, of invitation for bids (IFB) No. DE-FB89-RC-00001, issued by the Federal Energy Regulatory Commission (FERC), for stenographic services. Ace protests that FERC lacked a compelling reason for cancellation.

We deny the protest.

FERC administers laws and regulations involving energy issues such as the interstate transportation and sale of natural gas, the regulation of electric utility wholesale rates and transactions, the licensing and inspection of private, municipal and state hydroelectric projects, and the oversight of related environmental matters. In performing these functions, FERC conducts formal hearings that are recorded and transcribed. The IFB sought the necessary stenographic services.

Four firms, including Ace, offered to perform the required services at no cost to the government. Ace also submitted

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an alternate bid offering to pay the government 5 cents per page to perform the stenographic services.^{1/}

Prior to the evaluation of the bids, the contracting officer concluded that there were various defects in the solicitation which required cancellation. The agency states that the IFB: (1) improperly required the submission of quarterly reports, which were not needed by the agency; (2) failed to require the submission of bid and performance bonds; and (3) failed to include other necessary provisions dealing with organizational conflicts of interest, the safeguarding of data and loss of exhibits, and the Service Contract Act. Accordingly, FERC canceled the IFB and resolicited the requirement.

Ace protests that none of the alleged deficiencies constitutes a sufficiently compelling reason to cancel the solicitation. Ace argues that since no bidder will be prejudiced and the minimum needs of the agency would be satisfied, award should be made under the IFB.

Contracting officers have broad discretion in determining when it is appropriate to cancel an IFB. However, the preservation of the integrity of the competitive bidding system requires that the determination to cancel an IFB after bid opening must be supported by a compelling reason. Federal Acquisition Regulation § 14.404-1(a)(1) (FAC 84-49); Control Concepts, Inc., B-233354.3, Apr. 6, 1989, 89-1 CPD ¶ 358. The determination of whether a sufficiently compelling reason exists is primarily within the discretion of the administrative agency and will not be disturbed absent proof that the decision was clearly arbitrary, capricious, or not supported by substantial evidence. Donco Indus., Inc., B-230159.2, June 2, 1988, 88-1 CPD ¶ 522. In determining whether such a reason exists, one of the factors that must be considered is whether the best interest of the government would be served by making an award under the solicitation. Id.

FERC states that the requirement for bid and performance bonds is necessary to protect the agency financially and to ensure the continuous and reliable performance of stenographic services which are essential to the agency's operation. In this regard, Ace admits that the prior

^{1/} The agency states that it contemplated receiving the stenographic services at no cost to the government. In this regard, since 1981 these services have been performed by Ace at no cost to the government.

solicitations for these services contained bid and performance bond requirements. Ace, however, argues that FERC should be precluded from asserting its need for bid and performance bonds because, prior to bid opening, Ace had contacted FERC's contract specialist about the omission of the bond requirements and was informed that the omission was not a mistake. Ace also argues that since the resolicitation of the stenographic services only requires bonds in the amount of \$10,000, the relatively small amount of the bonds indicates that they are not important to the agency.

We find reasonable FERC's determination that bid and performance bonds are necessary and conclude that the need for bond requirements is a sufficiently compelling reason for cancellation of the IFB. In this regard, our Office has found reasonable the imposition of bond requirements where continuous operation of critical services is necessary. See IBI Sec., Inc., B-235857, Sept. 27, 1989, 89-2 CPD ¶ 277 (bid and performance bonds found necessary to ensure uninterrupted performance of security guard services). We have recognized that bond requirements are a proper means of securing to the government the fulfillment of the contractor's obligation under the contract in appropriate circumstances. Id.

Ace does not question that the continuous performance of the stenographic services is essential to the performance of the agency's duties. Rather, Ace appears to argue that the small dollar amount of the bonds in the resolicitation will not ensure the performance of these services. However, we have recognized that while bond requirements do not necessarily guarantee performance they are a useful means of heightening the likelihood of receiving satisfactory performance. IBI Sec., Inc., B-235857, supra, at 3.

Furthermore, we do not agree with Ace that FERC is precluded from asserting its need for bid and performance bonds simply because Ace prior to bid opening questioned the contract specialist about the omission of the bond requirements. The record shows that after bid opening the contracting officer learned that the IFB omitted the requirement for bid and performance bonds and disagreed with this omission. While Ace argues that the requirement for bid and performance bonds should have been known prior to bid opening, a procuring agency is not precluded from considering information relating to whether there is a sufficient reason to cancel a solicitation no matter when the information surfaces or should have been known. Independent Gas Producers Corp., B-229487, Mar. 2, 1988, 88-1 CPD ¶ 217.

Because we find that the agency's need to obtain bid and performance bonds is a compelling reason to cancel the IFB, we need not consider the other reasons stated by FERC for the cancellation of the solicitation.

The protest is denied.

for Seymour Spas
James F. Hinchman
General Counsel