

LEAHY



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: US Rentals

File: B-238090

Date: April 5, 1990

Harlen Owens, and Robert L. Leslie, Esq., McInerney & Dillon, for the protester.
Vasio Gianulias, Esq., Department of the Navy, for the agency.
Anne B. Perry, Esq., Paul Lieberman, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where contracting officer deliberately allowed bid acceptance period to expire without making award in order to effect cancellation of solicitation which she had determined was warranted, General Accounting Office will review propriety of the decision to cancel.
2. Contracting agency lacked compelling reason to cancel invitation for bids (IFB) for rental of construction equipment where apparent inconsistency between IFB provisions--which described certain requirements in terms of hourly and daily rates, but called for pricing on the basis of daily and weekly unit rates--did not prejudice any bidder, all bidders understood that daily and weekly unit pricing was required, they provided such pricing which was evaluated on a common basis, and an award under the IFB would meet the agency's actual needs.

DECISION

US Rentals protests the cancellation of invitation for bids (IFB) No. N62474-89-B-6189, issued by the Department of the Navy for the rental of various items of construction equipment. The protester contends that the Navy lacked a compelling reason to cancel the IFB.

We sustain the protest.

The solicitation, issued July 5, 1989, identified 29 contract line items (CLINs) for various pieces of

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construction equipment. Bidders were to enter their prices for each CLIN on a schedule which was printed on a standard continuation sheet form. The typical bidding format appeared as follows, as exemplified by the CLINs relating to dump trucks:

ITEM NO.	(DESCRIPTION OF)	ESTIMATED		UNIT PRICE	AMOUNT
	SUPPLIES/ SERVICES	QUANTITY	UNIT		
0010	TRUCK, DUMP 5 YD UP TO 7 YD				
0010AA	DAILY RATE	15	DY	\$ _____	\$ _____
0010AB	WEEKLY RATE	3	WK	\$ _____	\$ _____
0010AC	MONTHLY RATE	2	MO	\$ _____	\$ _____

Under this format, the rate units in the item description--"daily," "weekly," and "monthly"--parallel those further to the right and in the pricing schedule--"DY," "WK," and "MO". CLIN Nos. 13 through 15, however, for three different sizes of pavement-cutting saws, had a different format, as exemplified by CLIN No. 13:

ITEM NO.	(DESCRIPTION OF)	ESTIMATED		UNIT PRICE	AMOUNT
	SUPPLIES/ SERVICES	QUANTITY	UNIT		
0013	WALK BEHIND CONCRETE/ ASPHALT SAW				
0013AA	HOURLY RATE	20	DY	\$ _____	\$ _____
0013AB	DAILY RATE	3	WK	\$ _____	\$ _____

Here, the rate units in the item description did not parallel those to their right in the pricing schedule.

Three bids were received by the amended bid opening date of September 21. US Rentals was the apparent low bidder. After bids were opened, the second low bidder, Big 4 Rents Inc. complained to the agency about the discrepancy in CLIN Nos. 13 through 15 between the item description of hourly and daily rates and the request for prices in units of daily

and weekly rates. In a letter dated October 10, Big 4 contended that the bids of US Rentals and DTR Rentals, the third low bidder, should be rejected as nonresponsive as they did not include hourly rates in addition to the daily and weekly rates. As a result of Big 4's letter, the contracting officer reviewed the bids and in a letter dated November 14, requested approval from the Commander, Western Division, Naval Facilities Engineering Command, to reject all bids and cancel the solicitation. No action on the request was taken. The protester, after numerous inquiries to the contracting officer and other agency officials, commencing on October 20, 1989, was notified on December 5 that the agency was not going to award a contract under this solicitation, but rather, the requirement would probably be filled under another solicitation. On December 19, US Rentals filed this protest in our Office.

The agency argues that we should dismiss this protest on the grounds that the bids expired on November 20, and US Rentals' protest filed more than 10 working days after that date is untimely. The agency points out that the contracting officer did not request an extension because she intended to cancel the solicitation, and contends that US Rentals was either obligated to extend its bid acceptance period prior to November 20, or to protest within 10 days after that date had passed without a contract award, since the basis for protest was then known to US Rentals.

We do not believe that dismissal is warranted in these circumstances. US Rentals filed its protest in our Office 10 working days after it was initially notified that the agency was not going to award the contract, which is the actual basis of its protest. The record clearly demonstrates that US Rentals had previously diligently pursued this matter not only with the contracting officer but also with her superiors, and states that it was told that extenuating circumstances, namely an earthquake in the San Francisco area, had delayed matters. We also note that the protester states, and the agency does not deny, that agency contracting officials instructed US Rentals that it could not protest until after the bid acceptance period had expired, and after that time led the protester to believe that the agency was considering requesting an extension. Moreover, the agency concedes that the contracting officer's failure to request extensions of the bid acceptance period from the bidders was the deliberate result of her decision, 4 working days prior to the expiration of bids, to cancel the solicitation. Under these circumstances, the agency used the bid acceptance period expiration as a vehicle for cancellation, and we will view the matter as a cancellation,

despite the lack of a finally ratified formal determination to cancel.

While the Navy argues that since bids have expired there is no possibility of award, we disagree. A bidder may extend its acceptance period, and thus revive its bid, where it offered the acceptance period required by the IFB, and has not expressly or impliedly declined a request to extend its bid, and revival of the bid would not compromise the integrity of the competitive bidding process. V&Z Heating Corp., B-224725, Oct. 20, 1986, 86-2 CPD ¶ 472; TCA Reservations, Inc., B-218615, Aug. 31, 1985, 85-2 CPD ¶ 163. Further, the reinstatement of an improperly canceled procurement and the revival of bids which expired after cancellation is an appropriate method of avoiding an unfair bidding situation since bids have been made public. ADAK Communications Sys., Inc., B-222546, July 24, 1986, 86-2 CPD ¶ 103. Since nothing in the record indicates that revival of US Rentals' bid would be improper under this standard, we will consider the protest on its merits.

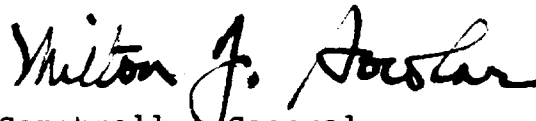
Although a contracting officer has broad discretion to cancel an IFB, there must be a compelling reason to do so after bid opening, because of the potential adverse impact of cancellation on the competitive bidding system after prices have been exposed. See Federal Acquisition Regulation (FAR) § 14.404-1(a)(1); Pacific Coast Utilities Serv., Inc., B-220394, Feb. 11, 1986, 86-1 CPD ¶ 150. The fact that a solicitation is defective in some way does not justify cancellation after bid opening if award under the IFB would meet the government's actual needs and there is no showing of prejudice to other bidders. Id.

The Navy contends that its examination of the bids and the solicitation demonstrate that there was some confusion as to what rates were to be bid for CLIN Nos. 0013, 0014, and 0015. Specifically, the protester ignored mention of a hourly rate description under CLIN No. 0013, and inserted "none" next to the hourly rate description for CLIN Nos. 0014 and 0015. Big 4 entered hourly rates for each item but also entered much lower daily and weekly unit rates, which formed the basis for the agency's evaluation of its price. DTR corrected the terms "hourly" to "daily" and "daily" to "weekly" and stated that there was a 1 day minimum. Despite the "hourly" and "daily" notations in the item description column, each offeror correctly filled in all of the price information that the IFB required and which the agency needed to evaluate its bid on a common basis. Essentially, the only effect of the possible ambiguity was that one bidder inserted certain higher hourly prices that were not necessary, and these prices were properly

disregarded by the agency. There is no question that the agency can satisfy its actual needs under this IFB, and no bidder was prejudiced by the solicitation language. Accordingly, we find that the agency did not have a compelling reason to cancel the solicitation.

The protest is sustained.

By separate letter of today, to the Secretary of the Navy, we are recommending that the IFB be reinstated and the award be made to US Rentals as the low bidder, if that firm's bid is otherwise responsive and the firm is determined responsible. US Rentals is also entitled to its costs of filing and pursuing the protest, including attorneys' fees.
4 C.F.R. § 21.6(d)(1) (1989).

for 
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