



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Rhimco Industries, Inc.

File: B-239016

Date: May 17, 1990

Dan J. Massey, for the protester.
Judy Utley, for Brazos Components, Inc., an interested party.
Judith A. Sukol, Esq., Office of the Command Counsel, Department of the Army, for the agency.
Amy M. Shimamura, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Contracting agency properly canceled solicitation where the solicitation failed to state that the item being procured was subject to a qualification requirement and the agency did not provide bidders with a reasonable opportunity to demonstrate the acceptability of their products prior to bid opening.

DECISION

Rhimco Industries, Inc., a small business, protests the cancellation of invitation for bids (IFB) No. DAAB07-90-B-G210, issued as a 100 percent small business set-aside by the United States Army Communications-Electronics Command for the procurement of 1,792 electrical connector covers, with an option for an additional 1,792 connectors. Rhimco contends that the cancellation was improper and that the contract should have been awarded to its firm.

We deny the protest.

The IFB, issued on December 29, 1989, incorporated by reference military specification MIL-C-22992 (Rev. E) which requires that the electrical connector covers be listed or approved for listing on a qualified products list (QPL). However, the IFB failed to notify potential bidders of the

048587/44450

qualification requirement by incorporating Federal Acquisition Regulation (FAR) § 52.209-1, "Qualification Requirements," as required by FAR § 9.206-2, for acquisitions subject to a qualification requirement.^{1/}

Six bids were received by bid opening on January 29, 1990. Brazos Components, Inc., a small business, was the low bidder; Amphenal, Inc., was second low but was determined to be nonresponsive because it is a large business; and Rhimco was third low. After a positive preaward survey, Brazos was awarded the contract on March 12, as the low responsive and responsible bidder.

Rhimco filed a protest with our Office on March 21, contending that since Brazos' product was not listed on the QPL, the company was ineligible for contract award.

The Army agreed; terminated Brazos' contract for the convenience of the government; and canceled the IFB because it failed to provide notice of the qualification requirement. Additionally, the agency determined that the solicitation was improperly set aside for small businesses because only one small business source, Rhimco, was eligible for contract award as a QPL source, and FAR § 19.502-2 requires that there be a reasonable expectation of two small business sources for set-aside procurements.

Rhimco now protests that the failure of the IFB to incorporate the "qualification requirements" clause does not provide a compelling reason for the cancellation of the IFB under FAR § 14.404-1(a)(1). Rhimco contends that the military specification incorporated in the IFB provided adequate notice of the QPL requirement; that Rhimco was prejudiced by the exposure of its price; and that the contract should have been awarded to its firm as the responsive and responsible bidder offering a reasonable price.

Although a contracting officer has broad discretion to cancel an IFB, because of the potential adverse impact on the competitive bidding system of cancellation after prices have been exposed, there must be a compelling reason to do so after bid opening. FAR § 14.404-1(a)(1).

^{1/} 41 U.S.C. § 253c(a) (1988) defines "qualification requirement" as a requirement for testing or other quality assurance demonstration that must be completed by an offeror before award of a contract.

The Army states that the failure to provide notice of the qualification requirement rendered the IFB defective, and that under FAR § 14.404-1(c)(1), inadequate specifications provide a compelling reason for cancellation of an IFB after bid opening.

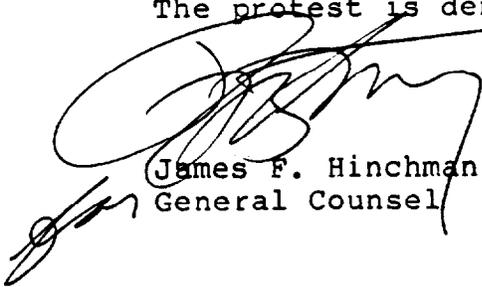
We find that the contracting officer acted reasonably in determining that the defective IFB provided a compelling reason to cancel the solicitation. The Competition in Contracting Act of 1984 requires contracting agencies to obtain full and open competition through the use of competitive procedures in accordance with the provisions of the Act and its implementing regulations. See 10 U.S.C. § 2304(a)(1)(A) (1988). Additionally, under the Small Business and Federal Procurement Competition Enhancement Act, if an agency wishes to establish a qualification requirement, it must specify in writing and make available to potential offerors all requirements that they must satisfy to become qualified. 41 U.S.C. § 253c(b)(2) (1988). Further, the statute requires agencies to ensure that potential offerors are provided a prompt opportunity to demonstrate their ability to meet qualification requirements. 41 U.S.C. § 253c(b)(4). See also FAR § 52.209-1(b).

In accordance with 41 U.S.C. § 253c, FAR § 9.206-2 requires contracting officers to insert the "Qualification Requirements" provision at FAR § 52.209-1 in the IFB when the solicitation is subject to a qualification requirement. Contrary to Rhimco's contention, the mere reference to the QPL requirement in a military specification does not satisfy this requirement. See Comspace Corp., B-237794, Feb. 23, 1990, 90-1 CPD ¶ 217. The failure to include notice of the qualification requirement in the solicitation renders the IFB defective. Id. Accordingly, the Army properly canceled the IFB in order to reissue the solicitation with the QPL notice and provide bidders with the opportunity to qualify their products in accordance with 41 U.S.C. § 253c(b)(4).

With regard to the exposure of prices, the agency states that since the corrected solicitation will require an increased quantity of covers that will be delivered to revised destinations, the effect of the exposure of prices under the prior solicitation will be lessened. Additionally, the Army states that because Brazos and Amphenal both offered prices that were lower than Rhimco's, Rhimco was not prejudiced by the exposure of its price. Further, the agency states that in view of these lower prices, the contracting officer was unable to determine that Rhimco's bid price was reasonable.

The record indicates that Rhimco's bid price was approximately \$40,000 higher than Brazos' low bid price and \$10,000 higher than the second low bidder's price. Since the required quantity of electrical connector covers has increased and the delivery destinations of the covers have been changed, the bid prices will have to be revised as well to reflect these changes. Thus, Rhimco has not been prejudiced by the disclosure of its bid price because the protester will have the same opportunity to compete on the resolicitation as other competitors whose prices were also revealed, and to offer whatever price it desires. Weststar Inc., B-235652, Aug. 7, 1989, 89-2 CPD ¶ 112.

The protest is denied.



James F. Hinchman
General Counsel