



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Pager One

File: B-238685

Date: June 28, 1990

Mark S. Kawata, Esq., Tanaka & Kawata, for the protester.
Terry Revnak, for RAM Paging Hawaii, an interested party.
Herbert F. Kelley, Jr., Esq. and Darryl Bardusch, Esq., for
the agency.

James M. Cunningham, Esq. and John F. Mitchell, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Contracting officer reasonably exercised her discretion in
deciding to cancel invitation for bids after bid opening
where specification was at best ambiguous and failed to
reflect minimum needs of agency.

DECISION

General Telecourier, doing business as Pager One, the low
bidder under invitation for bids (IFB) No. DAHC77-89-B-0168,
protests the cancellation of that solicitation by the
Department of the Army, Fort Shafter, Hawaii. The IFB
sought bids to provide for the electronic paging of staff
assigned to Tripler Army Medical Center no matter where they
may be located on the Island of Oahu, Hawaii, through the
lease with option to purchase of an estimated quantity of
600 one-way paging units and receiver systems with digital
display and voice-tone capabilities. The Army canceled the
IFB because it determined that several specifications for
the paging system were inadequate. Pager One contends that
the specifications were adequate and that the Army should
have proceeded with an award to it.

We deny the protest.

Bids were opened on October 26, 1989. In addition to Pager
One's low bid, one other bid was received from RAM Paging
Hawaii. After bid opening and prior to the decision to
cancel the solicitation, RAM protested to the Army any award
to Pager One; the Army resolved in Pager One's favor an

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apparent clerical error in its pricing schedule; and the contracting officer received from the designated pre-award survey monitor a recommendation--with which the medical center's technical representative disagreed--that award be made to Pager One. The contracting officer never ruled on RAM's protest or made a determination of Pager One's responsibility because she concluded after bids were opened that the specifications were defective and that the requirement should be resolicited under revised specifications which more clearly set forth the agency's minimum needs.^{1/} Pager One protested to our Office upon being notified of the contracting officer's decision to cancel the solicitation.

At the outset, the protester has expressed its concerns that the contracting officer made her determination after a pre-award survey monitor had recommended award to the protester and after the other bidder had communicated its concerns directly to the user's representative in addition to protesting to the contracting activity. While the contracting officer did receive a favorable recommendation from the pre-award survey monitor, she was also aware that the medical center's technical representative had unresolved concerns as to whether an award based on the existing specifications would meet the user's minimum needs; the contracting officer therefore elected to withhold any determination of Pager One's responsibility until the technical issues were considered. In this connection, we note a preaward recommendation is only advisory to the contracting officer, who may decide not to accept a recommendation if in his or her judgment there is reason to do so. Blane Corp., B-234887, Apr. 24, 1989, 89-1 CPD ¶ 403; Motorola, Inc., B-234773, July 12, 1989, 89-2 CPD ¶ 39. Thus, the receipt of a favorable pre-award survey did not obligate the contracting officer to proceed with an award.

The protester's other concern, that its position was prejudiced by the fact that RAM discussed its objections to an award to Pager One directly with the medical center's technical representative in addition to filing a protest with contracting officials, is not borne out by the record. The Army states that not only was the medical center's

^{1/} This sealed bid solicitation did not require bidders to describe in their bids the design of the system by which they intended to satisfy the contract requirements. This information (and the technical questions it raised) became available to the contracting officer only after the bids were opened and were to be evaluated for award.

representative not acting as an advocate for RAM, but that when they became aware of this situation, contracting officials took action to assure that RAM's further inquiries were directed through them. Based on our review of the record, we agree with the Army's conclusions that the medical center's representative, who never advocated award to RAM, only evidenced a concern that the medical center receive a paging system which met its needs. Consequently, and since in any event the technical issues raised by the medical center's representative have been discussed by all the parties to this protest, we perceive no prejudice to the protester as a result of the RAM contacts.

Turning to the merits of the contracting officer's decision to cancel the IFB, we note that the type of paging system at issue here essentially consists of a system of transmitters, linked to the contractor's facility either by telephone cable (a "wireline network") or by microwave relay and/or radio frequency. These transmitters, when activated by the paging company, transmit radio signals to individual paging units. The Army states that this paging system will be used to reach doctors throughout Oahu--a mountainous island with inherent transmitting and receiving problems--whenever emergencies occur and that therefore it is imperative that the system be capable of reaching doctors without delays or errors.

The contracting officer enumerated four specification deficiencies in her determination to cancel this procurement. First, the specifications did not provide a date by which the entire system must be operational. This was of particular concern because in order for a paging transmission to penetrate certain areas within the hospital it was possible that the contractor would need to install a paging transmitter and antenna on the premises in addition to the contractor's existing facilities. Second, although the specifications required that there be backup power sources for the contractor's terminals and transmitters not located at the medical center, the IFB failed to provide that these power sources must be operational for at least 2 hours, which the agency regards as the minimum time necessary to avoid disruption of the network system during electric company outages. Third, the specifications failed to require that each paging transmission be simulcast (each message transmitted only once but simultaneously by more than one transmitter) rather than sequentially (each message transmitted more than once, and each time from a different transmitter or group of transmitters). The medical center considered sequential or dual paging undesirable because it anticipated that the receipt of multiples of a message might lead individual users to turn off their paging units,

defeating the purpose of the system. Finally, as to the primary and backup paging network, the Army states that its specification did not expressly require that the control links between the contractor's facility and its transmitters be by microwave and/or radio frequency, and not by telephone wireline, which the medical center considers less reliable.

A contracting officer must have a compelling reason to cancel an IFB after bid opening. Federal Acquisition Regulation (FAR) § 14.404-1(a)(1) (FAC 84-53); Pneumatrek, Inc., B-225136, Feb. 24, 1987, 87-1 CPD ¶ 202. Contracting officials have broad discretion to decide whether or not compelling circumstances for cancellation exist, and our Office's review is limited to determining whether the exercise of discretion is reasonable. Phillip C. Clarke Elec. Contractor, Inc., B-226506 et al., June 25, 1987, 87-1 CPD ¶ 629. The failure of a solicitation to set forth specifications adequate to meet the agency's minimum needs constitutes a compelling reason to cancel. Snow White Cleaners and Linen Supply, Inc., B-225636, Mar. 26, 1987, 87-1 CPD ¶ 347. However, the use of deficient specifications is not sufficient justification where an award under the solicitation as issued would serve the actual needs of the government and would not prejudice the other bidders. Westinghouse Elec. Corp., B-217455, Aug. 30, 1985, 85-2 CPD ¶ 251. Without ruling on all the specification defects identified by the contracting officer, we conclude that the fourth defect, mentioned above, justified cancellation of the IFB.

At issue is IFB specification C.5.j., which stated in its entirety:

"The pager network shall have microwave and/or radio frequency (RF) control links or similar backup communications links so that telephone cable outages shall not affect the performance of the network. This does not include the trunk lines from the [medical center] to the Contractor's paging equipment."

This is the only paragraph of the specifications which addresses the control links between the contractor's facility and its transmitters. The Army has determined that for reasons of reliability the primary paging network must have microwave or radio frequency control links in order to avoid disruption of service. The contracting officer canceled the RFP in part because she concluded that this specification did not expressly require such control links. Certainly, such a requirement is inconsistent with the approach the protester stated it would use, i.e., a primary

wireline system which it would back up in the event of an outage by switching to other transmitters which were part of the same system. Although the protester argues that this type of backup link is permissible as a system which is "similar" to microwave or radio frequency, the Army was concerned that it still involved the use of the same telephone lines that were utilized by the protester in its primary system. The agency concluded that such a backup system would not meet its minimum need, which is to prevent disruption to the network due to telephone line outages. Since, at best, the specification appears to permit a system which does not satisfy agency needs, or at best is ambiguous on the point, the agency concluded it was necessary to cancel the solicitation and issue a new solicitation which expressly requires that "the primary pager network shall have microwave and/or radio frequency (RF) control links. . . ."

The basis for the Army's requirement for such a system is that a microwave and/or radio frequency linked primary system will reduce reliance on (and, consequently, reduce the chance of weather damage to) the exposed wires of the Oahu telephone system. The paging transmitters in the preferred systems will be primarily linked by non-telephone means to the paging company, unlike the transmitters in a wireline network which are primarily linked by the exposed wires of the telephone system. The Army states that the "majority of phone lines on Oahu are above ground" and telephone line outages occur due to falling trees or tree limbs during periods of high winds and heavy rains, which are common on Oahu, as well as from vehicular accidents from adjacent roadways. By contrast, microwave transmitters are placed away from these hazards and are designed to withstand the forces of nature.

In reply, Pager One argues that its wireline system has had a good reliability record during the 18 months it has been in operation and that microwave transmitter sites are also vulnerable to adverse weather because they are remotely located high above ground, with large antennas and towers.

Throughout this protest, the Army has emphasized its concern with the reliability of the paging system in view of its importance to the operation of the medical center. In our view, the protester's insistence that a wireline network is no more vulnerable to disruption from damage to wirelines than a microwave and/or radio frequency system does not rebut the Army's practical observation that a paging system linked by exposed telephone lines is inherently subject to greater threats of disruption than a paging system linked by microwave or radio transmission.

Consequently, we conclude that the Army reasonably decided that only a microwave and/or radio frequency-linked primary and backup system would satisfy its minimum need for an extremely reliable paging system on the island of Oahu. Since specification C.5.j. could be read as permitting a system that does not meet this requirement, we conclude that the Army had a proper basis to cancel this IFB.

The protest is denied.

for Robert P. Murphy
James F. Hinchman
General Counsel