



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Telemarc, Inc.

File: B-242339

Date: April 15, 1991

William F. Rehbein for the protester.
Janet Smith, Department of Energy, for the agency.
Jeanne Isrin, Esq. and John M. Melody, Esq., Office of the
General Counsel, GAO, participated in the preparation of the
decision.

DIGEST

Cancellation of line item of solicitation for computer systems after bid opening is unobjectionable where the specification for the item as stated was erroneous and led two of nine bidders to offer higher-priced systems that exceeded the agency's needs.

DECISION

Telemarc, Inc. protests the cancellation of item 1(a), for the acquisition of 260 16 MHz microcomputers, under invitation for bids (IFB) No. DE-FB01-90MA34229, issued by the Department of Energy (DOE). Telemarc contends that DOE lacked a compelling reason to cancel the item once bids had been opened and that it should be awarded the contract as the low responsive bidder. We deny the protest.

The solicitation was issued for 420 Intel-based 80386 microcomputers, separated into three items for different sized machines--16 MHz (item 1(a)), 20 MHz (item 1(b)), and 25 MHz (item 1(c)). The solicitation was amended four times to make changes in the technical specifications and to extend the date and time designated for bid opening. Eleven bids were received. Both the low and second low bids on item 1(a) were determined to be nonresponsive, leaving Telemarc in line for award of that item. However, in the course of the evaluation, DOE discovered an error in the revised technical specifications for the 16 MHz microcomputers. The original specification read:

"Minimum of 60 MB of formatted fixed-disk storage, half-height fixed-disk unit, internal to the system unit with a maximum average access time of 25 milliseconds." (Emphasis added.)

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The agency actually required a time of only 28, rather than 25, milliseconds and, to reflect this relaxation of the requirement, issued amendment 0002, which changed the specification to read:

"Minimum of 60MB of formatted fixed-disk storage, half-height fixed-disk unit, internal to the system unit with a maximum access speed of 28 milliseconds."

That is, the amendment both increased the time to 28 milliseconds and omitted the word "average" from the access time requirement. The amendment also changed the hard disk access time requirement for the 20 MHz and 25 MHz microcomputers to a maximum average access time of 28 milliseconds.

Prior to bid opening, Federal Computer Corporation, a prospective bidder, suspected an error in amendment 0002 and requested clarification as to whether DOE intended to omit the word "average," which created a requirement for an absolute maximum of 28 milliseconds in accessing the hard disk, a stricter requirement than an average maximum of 28 milliseconds. The contracting officer perceived no error and told Federal to bid on the requirement as it was stated in the revised technical specifications. However, after bid opening, in the process of a live test demonstration by another bidder, System Federal Corporation (SFC), DOE became aware that the only way to achieve compliance with the 28 millisecond disk access time would be to use a disk drive larger (120 MB) than the minimum allowed under the IFB (60 MB).

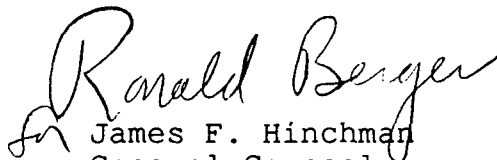
The agency concluded that the word "average" had, in fact, inadvertently been omitted from the revised specification for the 16 MHz microcomputers, and that an absolute maximum of 28 milliseconds in accessing the hard disk exceeded the government's minimum needs and would result in unnecessary additional cost. However, because Federal and SFC had bid on the specification as stated, which required a larger, more expensive disk drive, and the remaining nine bidders based their bids on a maximum average access speed, the agency determined that it could not merely disregard the discrepancy; rather, it concluded that the requirement was ambiguous and had resulted in unequal competition and, on this basis, canceled the item pursuant to Federal Acquisition Regulation (FAR) § 14.404-1(c)(1). Telemarc filed this protest with our Office on December 11, arguing that the omission of the word "average" was an immaterial typographical mistake that should have been obvious to all bidders because "average" was used elsewhere in the IFB, and standard industry practice presumes an average access time.

Contracting officers have broad discretion to determine whether appropriate circumstances to warrant cancellation exist. Total Protech, Inc., B-233264, Feb. 28, 1989, 89-1 CPD ¶ 211. Consistent with this discretion, our Office will not question a contracting officer's decision to cancel unless it was arbitrary or unreasonable. Bay Shipbuilding Corp., B-231918, Sept. 30, 1988, 88-2 CPD ¶ 305. The FAR provides that IFBs may be canceled after bid opening when inadequate or ambiguous specifications were cited in the IFB, or when cancellation clearly is in the government's best interest. FAR § 14.404(c)(1)-(9). Specifications must be sufficiently definite and free from ambiguity so as to permit competition on an equal basis; an ambiguity exists where two or more reasonable interpretations of a solicitation requirement are possible. See Brener Bldg. Maintenance Co. Inc., B-235370.2, Sept. 20, 1989, 89-2 CPD ¶ 251.

We agree with DOE that the IFB was sufficiently ambiguous to warrant canceling item 1(a). Although the IFB required "average" access times for other machines, as amendment 0002 plainly omitted this word from the item 1(a) requirement with no indication on its face that the agency had not simply changed its requirements, we cannot conclude that it was unreasonable for Federal and SFC to read the requirement as they did. Moreover, even if Telemarc is correct that the wording of other IFB provisions and industry practice support its interpretation, this argument ignores the fact that the agency specifically advised Federal that the omission of the word "average" was not an error. Thus, there clearly is no basis for concluding that Federal should have read the word "average" back into the IFB.

In cases such as this, where a solicitation requirement is unclear, with the result that bidders responded to it based upon different assumptions as to what the requirement was, the competition has been conducted on an unequal basis. Brener Bldg. Maintenance Co. Inc., B-235370.2, *supra*; Amdahl Corp.; ViON Corp., B-212018; B-212018.2, July 1, 1983, 83-2 CPD ¶ 51. Under these circumstances, cancellation of item 1(a) was proper.

The protest is denied.


James F. Hinchman
General Counsel