



Comptroller General
of the United States

Washington, D.C. 20548

KADLOS
Van Schaik

Decision

Matter of: I.T.S. Corporation

File: B-242725

Date: May 31, 1991

Bruce H. Crothers for the protester.
Craig R. Schmauder, Esq., and Tracy N. Gruis, Esq., Department of the Army, for the agency.
John W. Van Schaik, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Contracting agency had a compelling reason to cancel invitation for bids after bid opening where it reasonably determined that specifications relating to messenger/driver functions were incomplete and did not reflect its minimum needs.
2. Contracting agency could not award contract to low bidder and then change contract to include functions that were inadvertently omitted from invitation for bids since the value of the omitted functions was substantial and award of the contract based on less than the government's actual requirements would have prejudiced other offerors.

DECISION

I.T.S. Corporation protests the cancellation of invitation for bids (IFB) No. DACW05-90-B-0044, issued by the Army Corps of Engineers for mail and message services for its Sacramento District. The Corps issued the IFB as part of a cost comparison in accordance with Office of Management and Budget Circular A-76, which sets forth the executive branch's policy for determining whether to contract for services or to continue performance by government employees. I.T.S., the apparent successful bidder, asserts that the Corps' determination that the IFB contained defective specifications was erroneous and that the agency therefore lacked a proper basis for canceling the solicitation after bid opening.

We deny the protest.

The Corps received 10 bids in response to the solicitation; the lowest from Heritage Service Corporation, at \$606,491.94,

and the second lowest from the protester, at \$705,480. The remaining bids ranged from \$783,459 to \$6,070,000, and the government's estimate for cost comparison purposes was \$1,338,463. Based on the difference between Heritage's bid and the government's estimate, the contracting officer suspected that the firm's bid contained a mistake and eventually rejected the bid as unreasonable pursuant to Federal Acquisition Regulation (FAR) § 14.406-3(g)(5) because the firm did not supply documentation of its alleged mistake.

After rejecting the Heritage bid, the contracting officer allowed I.T.S. to make a site visit and asked the firm to provide a contract management plan and confirm its bid. In a letter dated November 30, 1990, I.T.S. confirmed its bid, submitted its contract management plan, and notified the Army that during the site visit it identified 13 tasks being performed by the existing mail and message staff "that will not be a part of the contract scope when it is awarded." Among the 13 tasks identified by I.T.S. were the following:

- Pickup/drop off of equipment repairs at local vendors.
- Pickup of purchased items at local vendors.
- Transport of equipment within or between Corps buildings."

In a letter dated December 10, the Corps agreed with I.T.S. and stated with respect to the three tasks listed above that "mailroom personnel are currently performing some duties that appear to have been included under this study which are not covered by the scope of work for the contract."

In a written "Determination and Findings" dated January 10, 1991, the contracting officer canceled the solicitation because he concluded that significant duties and functions essential to the operation of the District were omitted from the statement of work with the result that the solicitation did not accurately reflect the government's minimum needs. The contracting officer stated that based on I.T.S.' site visit it became apparent that there was a material discrepancy between the IFB statement of work, upon which the bids were based, and the Most Efficient Organization (MEO) document upon which the government's estimate was based. According to the contracting officer, the major defect in the statement of work was that the duties of one messenger/driver were completely omitted. The contracting officer explains that the omitted messenger/driver, on a daily basis, provides transportation of supplies, packages, furniture, equipment and people among various businesses, offices and agencies. The contracting officer noted that most of the work is performed in the greater Sacramento area, although periodically transportation services are required for longer distances.

According to the contracting officer, since the contract is for a 5-year period, approximately \$131,000 of the government's cost estimate can be attributed to the duties of the messenger/driver which were omitted from the statement of work. The contracting officer argued that simply adding the omitted duties to the contract after award would be inappropriate since the price difference between I.T.S. and the next low bidder averages less than \$16,000 per year. Thus, according to the contracting officer, the omitted duties were significant both in terms of their dollar value and the impact of failure to obtain the required services.

I.T.S. argues that the specifications were unambiguous and met the agency's minimum needs and that all parties, including it and the government, had the same understanding of the requirements. In support of this contention, the protester argues that a management study, which was performed for the agency by a private contractor and approved by the District's commanding officer, concluded that the statement of work was complete and met the government's minimum needs. I.T.S. also maintains that the management study recommended transfer of some of the omitted functions to the Records Management Section, which was the subject of a cost comparison study under another solicitation, IFB No. DACW05-90-B-0045 (IFB-0045). Moreover, according to I.T.S., the omitted duties, which are logistical functions that do not belong under the mail and message contract, more properly belong under the records management solicitation or under another cost comparison solicitation relating to logistical services, IFB No. DACW05-90-B-0046 (IFB-0046).

An IFB may be canceled after bid opening when there is a compelling reason to do so. FAR § 14.404-1(a). Inadequate specifications may constitute such a compelling reason. FAR § 14.404-1(c)(1). Contracting officials have discretion to determine whether or not appropriate circumstances for cancellation exist. We will consider the reasonableness of the exercise of that discretion. Source AV, Inc., B-238017, Mar. 27, 1990, 90-1 CPD ¶ 336. We generally regard cancellation after bid opening to be appropriate when an award under the solicitation would not serve the government's actual minimum needs or when other bidders would be prejudiced by such an award. Id.

Although we do not agree with all of the reasons set forth by the agency in support of the contracting officer's decision to cancel, for the reasons set forth below, we have no legal basis upon which to object to the agency's action. First, although, as the protester points out, a great deal of effort went into preparing the IFB statement of work and the Corps originally believed that the IFB included all required

functions, after bids were opened it became clear to the agency that the messenger/driver duties had been omitted. In fact, I.T.S. first pointed out that the omitted functions, which are being performed by the current government staff, were not included in the IFB's statement of work and therefore could not be required under a contract based on its bid. In its November 30 letter, I.T.S. argued that the 3 disputed functions and 10 others would not be part of the contract. Upon reviewing the solicitation, the Corps agreed with I.T.S. that the messenger/driver functions had been omitted from the solicitation.

In its protest submissions, I.T.S. argues that the disputed messenger/driver functions, in part, were included in the canceled IFB. In this respect, in its comments on the agency's report, I.T.S. argues that the IFB's statement of work "has references throughout for required messenger/driver support" and that "the specifications were clear in that the COR could direct the contractor to provide these services." Although I.T.S. lists numerous references to the IFB's statement of work which it suggests would encompass the disputed functions, most of these references relate to pickup, delivery and processing of mail, express mail drop off and bus shipments of packages. We think the agency reasonably decided that those provisions could not be used to require a contractor to pickup/drop off equipment for repairs at local vendors, pickup purchased items and transport equipment, supplies and people between Corps buildings. Two of the statement of work's references listed by the protester indicate that the contractor is to provide "off-site storage facilities for materials and supplies" and "equipment maintenance and repair of government-furnished equipment." These provisions simply require the contractor to inventory, maintain, and repair government-furnished supplies and equipment, such as postage meters, scales, furniture and telephones which the contractor is to use in performing the contract. We do not see how the contractor could be ordered under those provisions to perform the disputed duties.

Further, we agree with the Corps that other bidders would be prejudiced by simply adding the omitted functions to I.T.S.' contract after award. In this respect, the agency concluded that the omitted services would cost approximately \$131,000, and I.T.S. provides no basis to dispute that figure.^{1/} In

^{1/} I.T.S. states that its fully burdened cost for two messengers is \$50,000 per year and, under the circumstances, it is "ludicrous" to conclude that the cost of the omitted messenger/driver services would approach \$131,000 over the entire contract. I.T.S. has provided no basis for us to

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relation to the protester's bid of \$705,480, and the next low bid of \$783,459, the value of the omitted functions and their effect on the competition is significant. Source AV, Inc., B-238017, supra; see also Customer Metal Fabrication, Inc., B-221825, Feb. 24, 1986, 86-1 CPD ¶ 190 (where change in solicitation requirements imposes new obligations on contractor or has more than a trivial impact on price, the change is material, and award may not be based on a bid that does not reflect the changed requirement).

I.T.S. also argues that the Corps should award the contract and treat the omitted functions as a new acquisition pursuant to FAR § 14.404-1(a)(3). That provision states: "As a general rule, after the opening of bids, an invitation should not be canceled and resolicited due solely to increased requirements for the items being acquired. Award should be made on the initial invitation for bids and the additional quantity should be treated as a new acquisition." As the agency points out, FAR § 14.404-1(a)(3) applies only where an agency is procuring supplies and not where, as here, the agency is procuring services. Feinstein Constr., Inc., B-218317, June 6, 1985, 85-1 CPD ¶ 648. This rule is, we believe, based upon the premise that while it generally makes little difference to the agency which firm provides a conforming supply item, it would be disruptive and difficult for the agency to manage two or more providers of interrelated services.

As stated above, we do not agree with the protester's argument that these three functions are described in the IFB's statement of work. On the other hand, we have reviewed the MEO document upon which the statement of work is based and we are similarly unable to verify the agency's position that the three functions are set forth in that document. Nothing in the MEO document appears to concern the pickup or delivery of anything other than mail or messages. The agency has not cited a particular passage in the MEO which supports its position and, as far as we can determine, the IFB accurately reflects the functions as described in the MEO.

Nonetheless, the fact that the reasons initially put forth by the agency to justify a cancellation may be inadequate does

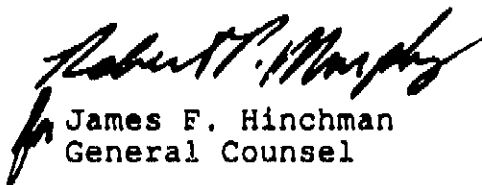
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dispute the Corps' conclusion that the duties of one messenger/driver were omitted from the IFB. Under the circumstances, its estimate of \$25,000 per year for a single messenger/driver, which would amount to an increase of \$125,000 over the 5-year contract, while less than the Corps' estimate, still supports the Corps' conclusion that the omitted functions are significant from a cost standpoint.

not render the cancellation invalid if there is other information in the record which justifies the cancellation. See Ford Aerospace and Communications Corp. et al., B-224421.2 et al., Nov. 18, 1986, 86-2 CPD ¶ 582. Here, the Corps' statement that it intended to include these messenger-type functions in both the MEO document and the IFB is reasonable.

There is no dispute that these services do need to be performed and currently are being performed by agency employees.^{2/} While I.T.S. believes that the messenger/driver functions could be performed in conjunction with the work that was required under the other solicitations, we think that the messenger/driver function, which includes the pickup and delivery of purchased items, equipment and supplies, is logically related to the pickup and delivery of mail and package shipment; we further think that since both functions involve the use of delivery vehicles in the same general location, they can be most efficiently and easily performed by a single firm. We conclude that the Corps' position regarding the need to include pickup and delivery of equipment in this mail and message procurement is reasonable, and therefore we have no basis to interfere with the agency's conclusion that this IFB did not adequately reflect its needs. Accordingly, we find on this record that the Corps had a cogent and compelling reason to cancel the solicitation. See Americorp, B-225667, Apr. 14, 1987, 87-1 CPD ¶ 404.

The protest is denied.


James F. Hinchman
General Counsel

^{2/} I.T.S. also argues that the disputed work is included under two other solicitations issued by the Corps at the same time as the canceled IFB; IFB-0045 for records management services and IFB-0046 for selected logistical services. After receiving bids under those solicitations, the Corps decided to maintain the work in-house because, under both, the government's in-house costs were lower than the contractor bids submitted. Thus, those solicitations did not result in contracts under which the omitted work could be performed.