



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Sunrise International Group, Inc.

File: B-252892.3

Date: September 14, 1993

Ray E. Baker for the protester.
Roy L. Masengale, Esq., and Captain Elizabeth DiVecchio Berrigan, Esq., Department of the Army, for the agency.
C. Douglas McArthur, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Cancellation and resolicitation of procurement was proper where invitation for bids did not allow 30 days for submission of bids as required by 15 U.S.C. § 637(e)(3) (Supp. IV 1992).

DECISION

Sunrise International Group, Inc. protests the decision by the Department of the Army to cancel invitation for bids (IFB) No. DAKF57-93-B-0014. The protester argues that it was unreasonable to cancel the solicitation, where as here, the agency received adequate competition and there is no evidence that an award based on the solicitation would prejudice any bidder.

We deny the protest.

On March 9, 1993, the agency issued the solicitation as a 100-percent small business set-aside, for a firm, fixed-price requirements contract to provide meals, lodging and transportation for the military entrance processing station in Oakland for a base period and two 1-year option periods. The solicitation required submission of bids by April 7.

After the opening of bids but prior to award, the agency discovered that the solicitation, which had allowed only 29 days for the submission of bids, did not comply with 15 U.S.C. § 637(e)(3)(B)(iii) (Supp. IV 1992), which states that when, as here, an agency is required to publish notice of a solicitation in the Commerce Business Daily (CBD), the

agency may not set a deadline for submission of bids which is "earlier than the date 30 days after the date the solicitation is issued." As a result, the contracting officer canceled the solicitation on April 27; this protest followed.

The protester contends that the agency's determination to cancel the solicitation was unreasonable. No bidder protested the solicitation response time, and the agency did not receive any bids after opening; the protester therefore concludes that the statutory violation did not prejudice any bidder. Further, the protester argues, in 1990 the agency mailed out 15 bid sets and received only 3 responses, a 20 percent response rate; the instant solicitation, by contrast, resulted in a 50 percent response rate--9 bids out of 18 sets mailed. The protester therefore concludes that the solicitation generated adequate competition, and the purpose of the statutory notice requirement was met.

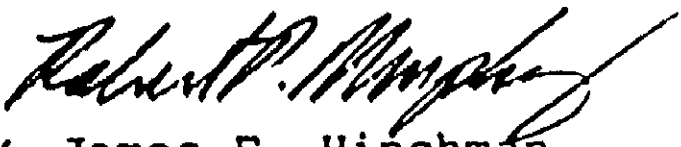
A contracting officer must have a compelling reason to cancel an IFB after bid opening. P&C Constr., B-251793, Apr. 30, 1993, 93-1 CPD ¶ 361; Dictaphone Corp., B-235888; B-236190, Sept. 25, 1989, 89-2 CPD ¶ 269. In our view, correction of a violation of the clear statutory obligation to allow at least 30 days for submission of bids after issuance of a solicitation constitutes a compelling reason. See Federal Acquisition Regulation § 14.404-1(c)(10).

The extent of competition actually obtained does not affect our conclusion.¹ The requirement that agencies provide notice of their needs and adequate time to respond--30 days in the case of a sealed bid procurement--further the statutory goal of obtaining full and open competition. See 15 U.S.C. § 637(h)(1) (Supp. IV 1992); 10 U.S.C. § 2301 (1988). Agencies may reasonably presume that failure to

¹In cases in which the protester argues that an agency should cancel a procurement because of a statutory violation, whether or not there was actual prejudice to the field of competition or to the protester would be relevant to whether we would recommend that the agency cancel. AUL Instruments, Inc., 64 Comp. Gen. 871 (1985), 85-2 CPD ¶ 324 (failure to allow 30 days for response to CBD notice of intent to award sole source contract).

comply with such a requirement constitutes sufficient prejudice to warrant correction.

The protest is denied.


for James F. Hinchman
General Counsel