



Decision

Matter of: Siemens Power Corporation; Asea Brown Boveri, Inc.

File: B-257167; B-257167.2

Date: August 11, 1994

Scott Whiting for Siemens Power Corporation, and Andre K. Baby, Esq., for Asea Brown Boveri, Inc., the protesters. Lester Edelman, Esq., and James R. Daugherty, Esq., Department of the Army, Office of the Chief of Engineers, for the agency.

Susan K. McAuliffe, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Compelling reason exists to cancel an invitation for bids after bid opening where the agency reasonably determines that the specifications on which the competition was based overstate the government's minimum needs and inadequately describe the agency's intended requirements.

DECISION

Siemens Power Corporation and Asea Brown Boveri, Inc. (ABB) protest the cancellation after bid opening of invitation for bids (IFB) No. DACW03-94-B-0020, issued by the U.S. Army Corps of Engineers, Little Rock District for the design, manufacture, testing, and installation of four solid state main generator static excitation systems. The protesters contend the solicitation should not have been canceled. Siemens contends it is entitled to award of a contract under the IFB as the apparent low bidder; ABB contends that Siemens's bid is nonresponsive and ABB is entitled to award as the apparent second-low bidder since it submitted the low responsive bid.

We deny the protests.

There are two general types of main generator static excitation systems, digital and analog. The agency states that it intended to allow either type of system under the IFB so long as a solid state system was offered since either digital or analog equipment would meet its minimum needs. The agency's pre-solicitation notices for the solid state

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main generator static excitation systems did not explicitly state whether the equipment was to be digital or analog. In preparing the IFB for issuance, the agency sought to incorporate a set of new excitation guide specifications but attempted to remove all language in those new specifications that referred to digital equipment since the agency, which had procured analog systems in the past, considered either type of equipment acceptable for purposes of the current procurement.

Of the 15 companies that had requested copies of the IFB based upon the general pre-solicitation notices, 4 submitted bids by the scheduled March 28 bid opening. Siemens, the apparent low bidder, offered an analog system. Two other bidders, including ABB, which offered digital systems, challenged any proposed award of a contract to Siemens, alleging that analog equipment was not allowed under the IFB since the solicitation, as issued on February 25, contained two specifications relating to digital equipment. (One specification called for an "RS-232 communications port" used only in digital control systems and another provided that "[t]he digital (solid state) voltage regulator shall contain automatic and manual regulator sections.") Both bidders also stated that if these digital provisions were not in the IFB, they too would have, or at least could have, offered an analog system, which at least one bidder stated would have allowed it to bid a much lower price.

Finding that the specifications inadequately stated the agency's actual requirements, the agency canceled the IFB after bid opening. The agency advised bidders that a new solicitation would be issued to better reflect the agency's minimum needs for solid state systems either of digital or analog type. Siemens's and ABB's protests followed.

A contracting agency must have a compelling reason to cancel an IFB after bid opening because of the potential adverse impact on the competitive bidding system of resolicitation after bid prices have been exposed. Federal Acquisition Regulation (FAR) § 14.404-1(a)(1); Southwest Marine, Inc., B-229596; B-229598, Jan. 12, 1988, 88-1 CPD ¶ 22. The fact that a solicitation is defective in some way does not justify cancellation after bid opening if award under the solicitation would meet the government's actual needs and there is no showing of prejudice to other bidders. Aero Innovations, Ltd., B-227677, Oct. 5, 1987, 87-2 CPD ¶ 332. However, FAR § 14.404-1(c)(10) specifically permits cancellation, consistent with the compelling reason standard, where cancellation is clearly in the public's interest. The overstatement of the government's needs in circumstances where less restrictive specifications should

result in enhanced competition and substantially lower costs to the government is a valid reason for cancellation under this FAR standard. Diversified Energy Sys.; Essex Electro Eng'rs, Inc., B-245593.3; B-245593.4, Mar. 19, 1992, 92-1 CPD ¶ 293.

We find that a compelling reason existed to cancel the IFB after bid opening. The record establishes that: (1) the agency's minimum needs can be satisfied by either analog or digital equipment; (2) through administrative error, the IFB contained provisions that may well have led potential competitors to believe that only digital equipment could be furnished, a conclusion suggested by the fact that 15 companies responded to the broadly-worded pre-solicitation notices but only 4 responded to the IFB itself; and (3) through the enhanced competition that the agency intends to seek, lower costs to the government should be realized. While ABB argues that because the IFB required digital equipment the agency must award a contract on that basis, award on the basis of overly restrictive specifications not intended by the agency is not consistent with the Competition in Contracting Act of 1984, 10 U.S.C. § 2305(a)(1)(A) (1988). See Control Concepts, Inc., B-233354.3, Apr. 6, 1989, 89-1 CPD ¶ 358. We therefore find reasonable the agency's decision to cancel the IFB and to resolicit. Diversified Energy Sys.; Essex Electro Eng'rs, Inc., supra.

The protests are denied.

/s/ Ronald Berger
for Robert P. Murphy
Acting General Counsel

¹In view of our conclusion that the IFB was properly canceled, we need not consider ABB's contention that Siemens's bid was nonresponsive for offering analog equipment. Further, since we conclude the cancellation is proper, ABB's request for reimbursement of its costs is denied. See Ogden Gov't Servs.--Protest and Modification; Tate Facilities Servs., Inc.--Protest, B-253350.3 et al., Apr. 4, 1994, 94-1 CPD ¶ 226; Comspace Corp., B-250863, Jan. 5, 1993, 93-1 CPD ¶ 14.