



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

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MAY 29 1973

York-Kripley, Inc.  
P. O. Box 349  
York, Pennsylvania 17405

Attention: Mr. C. Robert Lightner  
Manager, General Sales  
Department

Gentlemen:

Further reference is made to your <sup>protest</sup> ~~complaint~~ against the cancellation of Invitation for Bids (IFB) No. 32-73 issued on January 9, 1973, by the Department of Health, Education and Welfare, Center for Disease Control, Atlanta, Georgia.

IFB No. 32-73 requested bids for 13 flame monitor systems, Fireye UVP-58, or equal, consisting of a 25 FJ5, Model 4013 control and a Type 45 UV5, Model 1005 Scanner. When the five bids received were opened on January 31, 1973, your firm had attached a letter dated January 24, 1973, to its bid offering the cited brand-name product as an alternate bid, pointing out to the procuring activity that two of the salient characteristics (I.1 and J.2) listed in the specifications of the IFB were not features of the brand-name item. Your primary bid was submitted on the basis of the listed specifications, including the two features in question, i.e., I.1 and J.2, at a unit price of \$1,090 each.

Following several telephone conversations and correspondence between your office and that of the contracting officer, IFB 32-73 was cancelled without notice being given to the bidders, contrary to the requirements of section 1-2.404-3 of the Federal Procurement Regulations (FPR), and a new IFB, No. 36-73, was issued on February 16, 1973, because of the inconsistency that existed between the specifications and the referenced brand-name item. However, the new IFB again included the two salient features which were not part of the brand-name product. When this fact was brought to the attention of the contracting agency an amendment to the IFB was issued on February 21, 1973, which deleted the two salient features in question. When bids were opened on March 9, 1973, your firm submitted the lowest bid at \$295 each as opposed to your low bid of \$350 each in your alternate offer under the original IFB.

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Pased upon these facts, you submit that your bid under the first IFB was the only responsive bid received since you offered the model of a flame monitor which would meet all the requirements of the specifications and that an award should be made to you on the basis of that bid rather than under the second invitation. You also object to the agency having issued a new IFB after the previous bids had been made public.

While there appears to be some uncertainty as to the time when the agency recognized that its specifications were inconsistent with the referenced brand-name product, the record is clear that it was not until the first bid opening that you brought these inconsistencies to the attention of the procuring activity. Had such advice been given to the contracting officer before the bid opening, the inconsistencies could have been corrected by an amendment to the first IFB before bid prices had been disclosed.

The specifications should have clearly reflected the minimum needs of the Government, 48 Comp. Gen. 345 (1958) and 49 Comp. Gen. 211 (1959). In the instant case the contracting officer based his decision to cancel IFB 32-73 on the advice of the agency personnel that the two salient factors, I.2 and J.2, referenced in the specifications were not needed. Thus, it was concluded in accordance with FPR 1-2.404-1 that it was in the best interest of the Government to cancel the invitation. Contracting officers are clothed with broad powers of discretion in deciding whether an invitation should or should not be cancelled and this Office will not interfere with such determination unless it is arbitrary or capricious or not based upon substantial evidence. 39 Comp. Gen. 395, 399 (1959); 49 Comp. Gen. 135, 137 (1959).

Although it is regrettable that the bid prices were disclosed, this factor does not require an award of the contract when cogent or compelling reasons warrant cancellation of the IFB. Since in this case the initial IFB called for more than the minimum needs of the agency at a substantial additional cost to the Government, the procurement was properly readvertised using revised specifications (after the amendment) which reflected the Government's real needs.

Since we find no basis upon which our Office may properly object to the cancellation of the first invitation and readvertisement of the procurement, your protest is denied.

Sincerely yours,

Paul G. Dombing

For the  
Comptroller General  
of the United States