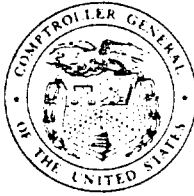


DECISION



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

66052

FILE: B-183871

DATE: October 14, 1975

MATTER OF: Edward B. Friel, Inc.

97824

DIGEST:

1. Where, via revised estimate of actual need, magnitude and number of changes between estimated quantities in IFB and subsequent estimated quantities utilized in recalculating bids after opening are substantial and agency justifies proposed award to mathematically unbalanced second low bidder, where respective positions of second and third low bidders do not change, on those recalculations, i.e., on basis significantly different from that upon which bids were submitted, no award should be made and solicitation should be canceled. Resolicitation should be based on best estimate of agency's anticipated needs.
2. Where mathematically unbalanced bids have been submitted, the following threefold analysis to determine soundness of IFB is suggested: (A) magnitude of variation between estimated quantities set out in IFB and any succeeding estimates; (B) whether low bidder remains low under succeeding evaluations using improved estimates of agency's actual needs; and (C) impact on competition of inserting new evaluation criteria into IFB after bid opening.

Invitation for bids (IFB) No. GS-03B-49538 was issued by the General Services Administration (GSA), Public Buildings Service. The IFB sought bids on acoustical ceiling and associated work to be performed in Arlington, Virginia, area Government buildings on a requirements basis. The IFB called for the submission of unit price bids on various items and subitems containing estimated quantities of work which were expected to arise. For each item or subitem, bidders were required to submit a price for performing that work during Government working hours and a price for performing the work during non-Government working hours. The total of extended unit prices for all items during Government working hours was weighted by a 0.50 factor and the total of the extended unit prices on all items during non-Government working hours was also weighted by 0.50. The following three bids were received and evaluated under the above formula, as follows:

Free State Builders, Inc.	\$54,266.00
Edward B. Friel, Inc.	55,849.50
Ogburn & Associates, Inc.	76,776.80

The protester argues that the Free State bid is materially unbalanced and should be rejected. The agency raises another issue, that is, the possibility that Free State's bid is nonresponsive for failure to submit a unit price on two of the items contained in the bidding schedule.

The agency, in a report to our Office on the protest, states that the estimated quantities used in the IFB were the best estimates of the anticipated requirements for the period of the prospective successor contract by the respective building managers in the Arlington area who issued work orders under the prior contract. The managers did not make actual quantity takeoffs from the orders issued up to that point, adjust takeoff figures to represent a year's requirements, or make further adjustments to reflect known factors likely to occur in the prospective period. Rather, building managers submitted estimates based upon their backgrounds of experience. Based on the above, GSA concludes--

"* * * Thus, there is a real question as to whether the weighting formula specified in the invitation rested on a sufficiently sound factual footing as to satisfy the criteria posited in governing Comptroller General decisions."

The GSA report further examines the validity of the estimates set forth in the IFB by analyzing the work orders actually issued during the term of the prior contract. Using these actual prior year quantities, the three bids were recalculated, that is, the unit prices were multiplied by the quantities actually used in the previous year. The extended prices generated were totaled to give the following respective total price of each bid:

Friel	\$73,226.26
Free State	75,331.64
Ogburn	88,530.37

GSA also made a recalculation of the bids utilizing actual prior year requirements adjusted by different nominal quantities for items which GSA had not ordered during the preceding term. As recalculated in this manner, Friel's bid again is lower than Free State's by \$4,047.25, while Ogburn remained third low.

GSA indicates in its report that the recalculations--based on more accurate estimates of its actual needs resulting in Friel rather than Free State being low--tend to suggest that the evaluation formula specified in the IFB did not serve the function of disclosing which bid would actually result in the lowest overall cost to the Government. Therefore, the agency states that if our Office finds that the Free State bid is responsive, the solicitation should be canceled because the IFB as issued did not disclose which of the two low bids (both unbalanced) would result in the lowest cost to the Government. This is because there then would be sufficient doubt that the weighting formula in the invitation performed its required function, compelling the conclusion that the invitation is defective. On the other hand, the agency states that if our Office were to find that Free State's bid was nonresponsive, it perceives no bar to making an award to Friel for, as between Friel's unbalanced bid and Ogburn's bid, which under any of the calculations is substantially higher, the weighting formula does perform the intended function of disclosing which bid would be the most advantageous to the Government despite the unbalancing on Friel's part.

In a recent similar case involving, inter alia, the three bidders here, we clarified our position on certain pivotal issues concerning unbalanced bidding. Edward B. Friel, Inc., B-183381, September 22, 1975, 55 Comp. Gen. _____. We took the view that the inquiry into material unbalancing begins with an examination of the solicitation and its evaluation formula. We further stated that substantial variations between the IFB's estimates and succeeding estimates tend "to create substantial doubt that award to any mathematically unbalanced bidder or, for that matter any bidder, would result in the lowest cost." (Emphasis added.) In addition, our Office noted decisions indicating that solicitations should be canceled where the contracting agency has concluded upon reexamination that the estimate of work set out in the solicitation was not a reasonably accurate representation of its actual anticipated needs. See B-164429, August 21, 1968; B-159684, October 7, 1966. But see, Tara Publications, Inc., B-182915, February 24, 1975, 75-1 CPD 110. To summarize, insofar as unbalanced bidding is concerned the general proposition applies that when the IFB's estimates are not reasonably accurate the IFB is fundamentally unsound.

In this light, the Friel case suggests a threefold analysis to determine the soundness of the IFB, as follows:

A. The magnitude of the variation between the estimated quantities set out in the IFB and any succeeding estimate;

B. Whether the low bidder remains low under succeeding evaluations using improved estimates of the agency's actual needs; and

C. The impact on competition of inserting new evaluation criteria into the IFB after bid opening via a revised estimate of actual needs.

With regard to the degree of change between the quantities set forth in the instant IFB and the estimates used for the second recalculation, we note the following:

- (1) 140 of the 167 line item estimates were revised;
- (2) the average percentage of change¹ was 389 percent;
- (3) the mean change was 80 percent;
- (4) 27 estimates did not change at all;
- (5) 35 estimates changed 50 percent or less;
- (6) 106 estimates changed 75 percent or more;
- (7) 37 estimates changed 100 percent or more; and
- (8) some estimates changed 11,400 percent and 15,900 percent.

In view of the number of changes and the magnitude of the changes made between the estimated quantities stated in the IFB and the agency's latest statement as to its anticipated needs, we believe that there has been a substantial variation.

Secondly, the low bid under the IFB from Free State, when recalculated based on both actual quantities ordered under the predecessor contract and a latest GSA revised estimate of anticipated needs, became second low to Friel while Ogburn in all cases remained third. We note, however, that if Free State's bid were to be found nonresponsive, GSA would have us attach significance to the fact that the order of the Friel and Ogburn bids do not reverse upon the recalculations using estimates other than that set out in the IFB. This position is based upon GSA's belief that the evaluation criteria set out in the IFB are sufficient to perform the intended function of disclosing which of the remaining eligible bids would be most advantageous to the Government. However, whether we accept this view or not does not lessen the fact that GSA is now evaluating bids on criteria which are substantially variant from that set out in the IFB or that the solicitation was

1. Computed as follows:

$$\frac{\text{difference between the quantity stated in IFB and new estimated quantity}}{\text{quantity stated in IFB}}$$

fundamentally defective for failure to adequately state the Government's actual needs. We believe the following excerpts from Friel where similar recalculations were made by GSA are pertinent:

"We understand the distinction drawn by GSA, supra, that its reevaluations were only for the purpose of demonstrating that the IFB's evaluation criteria served their intended function of identifying the lowest bid. However, we believe that the net effect of a procedure of this type is to introduce totally new evaluation factors into the procurement. To sanction this approach would mean that any instance where mathematically unbalanced bids are submitted could result in a reevaluation by the contracting agency using some basis other than the one specified in the IFB."

and

"Also to be noted is the fact that as the estimates used in the reevaluations change, the possibility is raised that the bidders, if they had the opportunity, might change their pricing strategy and offer different bid prices. We believe that proposed acceptance of an apparent low bid, which is based, in effect, on a revised evaluation formula, must be viewed as making an award on a basis as to which unsuccessful bidders have not had an opportunity to compete."

In view of the above, i.e., the magnitude and number of changes made to the estimates after bid opening and the fact that award is being justified on a basis significantly different from that upon which bidders submitted their bids, we believe that no award under the instant solicitation would be proper. Therefore, the IFB should be canceled and the requirement should be resolicited based on GSA's best estimate of its anticipated needs. Accordingly, there is no need to discuss the responsiveness of Free State's bid.


To further clarify our position on unbalanced bidding, we believe it is appropriate to discuss Tara Publications, Inc., cited above.

In Tara, the mathematically unbalanced low bidder and incumbent contractor, whose bid had been rejected, complained after an

B-183871

award that the estimated quantities used as the basis for award were vastly overstated. The contracting officer then reevaluated the bids based on the actual prior year quantities ordered. The reevaluation changed the low bidder's competitive position from first to sixth by almost doubling its bid price and maintained the relative positions of the second through fourth low bidders by almost halving their respective bid prices.

The decision does not disclose the magnitude of the changes made between the estimated quantities set out in the IFB and the agency's more accurate reflection of its actual requirements. However, since the agency acknowledged that its needs were overstated in the IFB and in view of the significant price changes which occurred under the reevaluation, it is clear that the magnitude of the changes made in estimated quantities was substantial. Our decision upheld the awards made to the second through fourth low bidders. In view of the above, while Tara may indicate that a different result should be reached in the instant case, to the extent that the decision may be inconsistent with the rationale stated above it will no longer be followed by this Office.


Deputy Comptroller General
of the United States