

01528

Louis Koutrakowski  
FDC. I

**DECISION**



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

**FILE: B-187726**

**DATE: February 14, 1977**

**MATTER OF: Elrich Construction Company**

**DIGEST:**

Requirement-type IFB which required bids on net basis or single percentage factor to be applied to agency priced items without providing quantity estimates is in violation of FPR § 1-3.409(b)(1) (1964 ed., circ. 1) and should be readvertised, since bidders are not competing on equal basis unless apprised before submission of bids of what may be required under contract to be awarded.

On September 30, 1976, the General Services Administration (GSA) issued invitation for bids (IFB) No. GS-03B-63054 for partition work of a requirements-type, 1-year term contract. The IFB specified a unit price for each described unit of work which had been predetermined by GSA. No quantity estimates were specified. Bidders were to bid on a net basis (if the bidder intended to bid the exact prices specified) or submit a single plus or minus percentage factor to be applied to the unit prices in the schedule which would then be applied to every work order. Award was to be made to that bidder whose offer would produce the lowest unit prices for the units of work.

Elrich Construction Company (Elrich) protested to the contracting agency concerning the IFB format prior to bid opening. Nevertheless, bids were opened on October 26, 1976. Three bids offering percentages of -26, -15.27 and + 32.6 were received. Elrich did not bid. On November 1, 1976, Elrich protested to this Office on the basis that bidders were precluded from intelligently bidding due to the lack of estimated quantities.

In a recent case involving GSA we found the IFB format here in question to be defective because of the failure to include quantity estimates for the individual work units. Michael O'Connor, Inc., B-186657, November 30, 1976, 56 Comp. Gen. \_\_\_\_\_, 76-2 CPD 456. The IFB was in violation of Federal Procurement Regulations (FPR) § 1-3.409(b)(1) (1964 ed., circ. 1) which is specific that in a requirements contract--

"\* \* \* An estimated total quantity is stated for the information of prospective contractors, which estimate should be as realistic as possible. The estimate may be obtained from the records of previous requirements and consumption, or by other means. \* \* \*

Although the protest in Michael O'Connor was considered on the basis that it presented a significant issue, no corrective action was recommended for that procurement, since the protest was filed untimely. Consequently, the issue here is whether there is a compelling reason to cancel the defective IFB. It is GSA's position, based upon 52 Comp. Gen. 285 (1972), 49 id. 211 (1969), 48 id. 731 (1969), 42 id. 523 (1963), and 41 id. 536 (1962), that cancellation and readvertisement would not be justifiable, since adequate competition and reasonable prices were obtained under the IFB. In that regard, GSA states that of the three bids received one "was very reasonable" and another "extremely favorable."

Our Office was opposed to cancellation and readvertisement in 52 Comp. Gen. 285 because we concluded that, if the original specifications were changed, there was no reason to believe that anyone other than the six original bidders would bid on the IFB or that any different equipment would be offered. Likewise, in 48 Comp. Gen. 731, we noted that any resolicitation would result in offers from the exact same bidders on the exact same equipment. In 49 Comp. Gen. 211, in recommending reinstatement of the original IFB, we stated that there was no evidence to indicate that it precluded other potential bidders from submitting responsive bids. We expressed no objection to award under the IFB in 42 Comp. Gen. 523 where there were no "significant differences" between the specification in the IFB and that which the agency should have used. Finally, in 41 Comp. Gen. 536, we expressed the view that cancellation of an IFB was not warranted where the wrong patent indemnity clause was used.

B-187726

As noted in Edward B. Friel, Inc., 55 Comp. Gen. 231, 240 (1975), 75-2 CPD 164, each decision must stand upon its own facts. Unlike the cited decisions, here we have a potential bidder who complains before bid opening that it was precluded from bidding by the IFB format and did not bid because of it. Thus, if the IFB is resolicited, bids may be received from more than the original bidders. Further, in this case, bidders were not provided all the information that might be important to arrive at an intelligent bid on a common basis and the addition of quantity estimates would be a significant difference between the original and the readvertised IFB.

Although GSA has contended that adequate competition and reasonable prices were obtained under the IFB, we are not satisfied that the prices were the result of informed and free and open competition and therefore doubt the adequacy of the competition. We believe that each bidder, other than an incumbent contractor, would have had to speculate totally on the amount of work that will be ordered under the contract. In that regard, competition is not simply the ability to receive more than one bid. Rather it contemplates that all prospective bidders have an opportunity to submit bids on an equal basis. Bidders are not competing on an equal basis unless they are apprised before they submit bids of what may be required under the contract to be awarded. 43 Comp. Gen. 544 (1961) and 39 id. 570 (1960). No prospective contractor can intelligently compute its bid or decide that it wishes to incur the expenses of competing for the contract without being fully informed before it submits its bid of the factors affecting the cost of its work or its ability to perform under the contract.

In the circumstances, the IFB should be canceled and the requirement resolicited consistent with Michael O'Connor and FPR § 1-3.409(b)(1), supra.

Deputy

  
Comptroller General  
of the United States



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

Louis Korlakowski  
Proc. I

B-187726

February 14, 1977

The Honorable Jack Eckerd  
Administrator  
General Services Administration


Dear Mr. Eckerd:

Enclosed is a copy of our decision of today sustaining the protest of the Elrich Construction Company concerning a deficiency in invitation for bids No. GS-03B-63054.

In view thereof, the requirement should be resolicited and estimated quantities should be provided in the requirement-type contract consistent with the Michael O'Connor decision and Federal Procurement Regulations § 1-3.409(b)(1) (1964 ed., circ. 1).

We would appreciate being informed as to the action taken.

Sincerely yours,

  
Deputy Comptroller General  
of the United States

Enclosure