

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: United Contracting LLC

File: B-407417

Date: January 2, 2013

Frank V. Reilly, Esq., for the protester.

Natica Chapman Neely, Esq., Department of Veterans Affairs, for the agency.

Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency had a compelling reason to cancel an invitation for bids (IFB) for roofing services after bid opening where the agency reasonably found that the IFB failed to provide sufficient information to allow bidders to accurately bid.

DECISION

United Contracting LLC, of Pike Road, Alabama, protests the cancellation of invitation for bids (IFB) No. VA247-12-B-0375, issued by the Department of Veterans Affairs (VA), for replacing roofs.

We deny the protest.

The IFB, issued on May 18, 2012, as a total service-disabled veteran-owned small business (SDVOSB) set-aside, sought bids to replace the roofs on buildings 2 and 4 at the east campus of the Central Alabama Veterans Health Care System, Tuskegee, Alabama. The IFB contained two bid items: (1) "BID ITEM NO. 1" for all the work to replace the roofs on both buildings, and provide a 20-year bituminous roof warranty; and (2) "DEDUCTIVE BID ALTERNATIVE #1" to delete the work for one of the buildings (building 2) and provide a 15-year bituminous roof warranty, instead of a 20-year warranty. IFB at 1.

In addition, amendment No. 0003, added "ADDENDUM ITEM UNIT PRICING," which stated as follows:

Contractor to provide unit pricing for rotten, deteriorated or damaged existing wood components needed and not specified. The price shall

be per board foot of furnished and installed items. Provide evidence and quantities to the VA.

RFP amend. 3, at 1.

Five bids were received in response to the IFB by the June 18 bid opening. One bidder was determined to be ineligible for award because it was not an SDVOSB. The remaining bids ranged from \$85,000 to \$499,000 for BID ITEM NO. 1; \$19,000 to \$175,000 for DEDUCTIVE BID ALTERNATIVE #1; and \$4.50 per unit to \$50 per unit for the ADDENDUM ITEM UNIT PRICING. Agency Report (AR) at 2.

On July 12, the contracting officer cancelled the IFB pursuant to Federal Acquisition Regulation (FAR) § 14.404-1(c)(4). The contracting officer determined, based on the significant variance in prices, that bidders may not have comprehended the VA's requirements because ADDENDUM ITEM UNIT PRICING in amendment 3 failed to include a specific estimate of the deteriorated or damaged wood components in need of repair, or a basis for evaluating the costs for this work. Specifically, the contracting officer decided to issue a new solicitation to provide: a detailed statement of work; revised specifications; the estimated square footage of rotten, deteriorated, or damaged existing wood; the estimated quantities of components needed; and, a formula by which the bidder would be able to accurately bid on the work required. AR, exh. 4, Determination and Findings, at 3.

Because of the potential adverse impact on the competitive bidding system of cancellation after bid prices have been exposed, a contracting officer must have a compelling reason to cancel an IFB after bid opening. FAR § 14.404-1(a)(1). The contracting officer has the discretion to determine whether the necessary circumstances exist for canceling a solicitation, and we will review the decision to ensure that it was reasonable. Dynamic Corp., B-296366, June 29, 2005, 2005 CPD ¶ 125 at 4. As a general rule, the need to change inadequate or ambiguous specifications and to revise them, after the opening of bids, to express properly the agency's minimum needs constitutes such a compelling reason. See FAR § 14.404-1(c)(1), (2); G.H. Harlow Co., Inc., B-245050 et al., Nov. 20, 1991, 91-2 CPD ¶ 484 at 3. In addition, FAR § 14.404-1(c)(4) provides that a compelling basis to cancel exists if the IFB does not provide for consideration of all factors of cost to the government.

Here, we find the contracting officer's determination to cancel the solicitation reasonable because certain material matters related to the specifications and cost to the government were not included in the invitation. As noted by the contracting officer, the record evidences a wide disparity in bid prices, and we find that without a more accurate formula for pricing the work, the agency could not accurately compare the bidder's prices against each other, or otherwise determine which bid reflected the lowest price to the government. Thus, any award under the IFB would

be prejudicial to the remaining bidders and the government. See Dynamic Corp., supra. Although, the protester raises several arguments as to why the cancellation is improper, it has not shown that the agency was not reasonably within its discretion to cancel the IFB.

The protest is denied.

Susan A. Poling
General Counsel