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**Comptroller General
of the United States**

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

Decision

Matter of: Dynamic Corporation

File: B-296366

Date: June 29, 2005

Robert A. Klimek, Jr., Esq., Klimek, Kolodney & Casale, PC, for the protester.
Stephen L. Schwartz, Esq., General Services Administration, for the agency.
Kenneth Kilgour, Esq., and Christine Melody, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Compelling reason to cancel invitation for bids (IFB) exists where IFB contained pricing specifications that were ambiguous and that led to total prices from bidders that lacked a common basis for comparison.

DECISION

Dynamic Corporation protests that the General Services Administration (GSA) improperly canceled invitation for bids (IFB) No. GS-11P-05-MKC0016, to provide construction services at Federal Office Building Number 8 in Washington, D.C.

We deny the protest.

GSA issued the IFB on January 18, 2005 for construction services for the specified building. As the first phase of modernization of the building for use as office space, the IFB calls for demolition and removal of equipment and structures not intended to be reused. A major component of the demolition will be the abatement and in-place management of hazardous materials associated with the structural components of the building. IFB § 02000, ¶ 1.0. The IFB called for a lump sum bid for all the work to be performed, including clean-up of hazardous materials. The bidder's price for the hazardous materials services was to be included in the lump sum bid; bidders were advised to base their prices for these services on the estimated quantities in the IFB, as verified by the bidders using the drawings and specifications provided, and by conducting building inspections.

In addition to the lump sum bid, bidders were to provide unit prices for the hazardous materials services; these prices were to be used to adjust the lump sum

price (either up or down), if the actual amount of hazardous materials encountered during performance was either 20 percent higher or 20 percent lower than the IFB estimates. The unit prices were to be included in the evaluation of bids. IFB § 00120, Part 3 (“The low bidder for purposes of award is the responsible bidder offering the lowest price for the base bid (consisting of the lump sum bid and any associated unit price bids extended by the applicable number of units shown on the bid form).”).

The unit prices for the hazardous materials services were to be entered on an attachment to the IFB. The attachment listed 19 categories of materials (e.g., pipe insulation, sprayed-on fireproofing, vinyl floor tile). For six of the categories, the form included spaces for bidders to enter three unit prices per category, under the headings “Type 1,” “Type 2,” and “Type 3.” For seven categories, the form included spaces for two unit prices per category, under the headings “Type 1” and “Type 2.” For the remaining six categories of materials, the table included space for only one unit price per material. The form also listed an estimated quantity for each material; for those materials for which more than one unit price was contemplated, the form repeated the estimated quantity under each of the two or three “types” specified. An example of one entry on the attachment is as follows:

Code	Material	Identify Types of Material or Removal Method Having Different Unit Costs	Est. Quantity	Unit	Unit Price	Total Cost
PI	Pipe Insulation	Type 1.	2560	LF	\$	\$
		Type 2.	2560	LF	\$	\$
		Type 3.	2560	LF	\$	\$

Amendment No. 3, issued February 25, incorporated bidder questions and agency responses into the IFB. Question and response 13a stated:

[Question] What is meant by Type 1, Type 2, and Type 3 in the Asbestos Unit Rate Bid Form [the attachment]? Does it relate to pipe size or thickness, asbestos type or abatement method? Without an explanation, the line items are subject to interpretations, which may be different between contractors?

[Response] The type 1, 2, and 3 designations are intended to provide the contractor the flexibility to bid different unit rates if he chooses to. If the contractor deems it applicable, he can present different rates based on pipe size, thickness, composition, location, accessibility, or any other factor that the contractor feels is relevant.

At bid opening on March 2, GSA received eight bids, and Dynamic was the low bidder.

After reviewing the bids, the contracting officer decided that it was appropriate to cancel the IFB for three reasons. First, it was not clear whether bidders were obligated to enter bids for all the unit price items in the attachment. As quoted above, the agency, in response to a bidder's question on this issue, stated that bidders could offer different unit prices if they deemed them "applicable." In contrast, Section 10 of the SF stated that bidders were to "furnish all labor, material, equipment and supervision for the demolition, abatement and chilled water by-pass" for the building. (Emphasis added.) In fact, three of the eight bidders, including the protestor, did not enter unit prices for all the types of materials specified. The contracting officer determined that the price evaluation method called for by the IFB, which added all of the unit prices to arrive at a grand total, did not adequately account for those bids which did not include unit prices for all material types, and therefore provided those bidders a possible price advantage.

Second, the estimated quantity of work for some types of abatement services was substantially overstated due to the way in which the attachment was laid out. For example, the estimated quantity of work for each of the three types of pipe insulation abatement was given as 100, for a total of 300 for all three types, although the actual estimated quantity was 100 for the three types combined. Similar overstatements occurred throughout the attachment. Although each of the bidders was using the same incorrect information, the contracting officer reasoned that the overstated quantities may have produced inaccurate pricing, because bidders' unit pricing would presumably be lower for larger quantities of work.

Finally, the attachment was intended to request pricing information for abatement services at various locations within the building, and the form contained blank spaces for three types of removal which were up to the bidder to define. For example, as set out above, under the category "pipe insulation," the attachment asked bidders to "identify [three] types of material or removal method[s] having different unit costs." Some bidders responded by bidding on different diameter pipes, while others selected different asbestos containment methods. Even bidders who chose to bid on three different pipe diameters did not all choose the same ones. Consequently, the individual unit prices varied significantly among the bidders. For instance, the average low bid for the three types under pipe insulation was \$3.10, and the average high bid was \$16.83, a difference of over 400 percent. See Protest, Exhibit B. Because GSA had not defined the unit items, but rather left their definition to bidders' discretion, the contracting officer determined that the unit prices provided by each bidder could not reasonably be compared to one another.

For these three reasons, the contracting officer concluded that the IFB contained inadequate or ambiguous pricing specifications which prevented bidders from preparing their bids on a common basis. The contracting officer thus concluded that

the agency had a compelling reason to cancel the IFB under Federal Acquisition Regulation (FAR) § 14.404-1(c)(1). This protest followed.

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. Phil Howry Co., B-245892, Feb. 3, 1992, 92-1 CPD ¶ 137 at 2. In this regard, the FAR specifically states that an IFB may be canceled where the agency determines that the IFB contains inadequate or ambiguous specifications. FAR § 14.404-1(c)(1). Specifications must be sufficiently definite and free from ambiguity so as to permit competition on an equal basis. Hebco, Inc., B-228394, Dec. 8, 1987, 87-2 CPD ¶ 565 at 2. Ambiguity exists if a solicitation requirement is subject to more than one reasonable interpretation when read in the context of the solicitation as a whole. United States Elevator Corp., B-225625, Apr.13, 1987, 87-1 CPD ¶ 401 at 4.

We find that the GSA properly canceled the IFB here because it contained numerous ambiguities, as a result of which bidders did not prepare their bids based on a common understanding of the agency's requirements, and prices could not be compared on an equal basis. The ambiguities misled bidders as to the requirement to enter prices for all the unit price items listed, producing lower total bids for the three bidders who did not bid on each of the unit prices. Further, even if every bidder had entered prices for each unit price item, because, in completing the attachment, the IFB left to the bidders' discretion the nature of the work that each bid, the resulting total price for the unit work provided by each of the bidders did not afford the agency a basis on which to accurately compare the bid prices. In addition, as explained above, the way in which the estimated quantities were listed in the attachment was misleading and resulted in a substantial overstatement of the estimates, which in turn likely materially affected the bidders' prices. The record thus shows that the lack of clarity in the attachment resulted in bidders competing on an unequal basis, such that any award based on this IFB would be prejudicial to the remaining bidders and the government. This provides the agency with a compelling reason to cancel the IFB. Neals Janitorial Serv., B-276625, July 3, 1997, 97-2 CPD ¶ 6 at 5.

Dynamic makes a series of other allegations, the thrust of which is that the contracting official acted in bad faith in canceling the IFB. Government officials are presumed to act in good faith, and a protester's claim that contracting officials were motivated by bias or bad faith must be supported by convincing proof; our Office will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Shinwha Elecs., B-290603 et al., Sept. 3, 2002, 2002 CPD ¶ 154 at 5 n.6. The protestor offers no evidence to refute the record that the IFB cancellation was a result of reasonable concerns that the ambiguous

pricing specifications had yielded total bid prices that could not be compared against each other.

The protest is denied.

Anthony H. Gamboa
General Counsel