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United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: Paragon Van Lines, Inc.

File: B-291820.2; B-291913

Date: April 8, 2003

Michael D. Coccozza for the protester.

Maj. Art J. Coulter, Department of the Army, for the agency.

Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency had compelling reason to cancel an invitation for bids containing inconsistent provisions regarding the performance period and outdated Service Contract Act wage determinations.

DECISION

Paragon Van Lines, Inc. protests the cancellation after bid opening of invitation for bids (IFB) No. DAKF29-02-B-0001 and the issuance of request for quotations (RFQ) No. DABJ15-03-T-0074 by the Department of the Army for inbound and outbound transportation of household goods.

We deny the protests.

The IFB, issued January 17, 2002, provided for multiple awards of requirements contracts for packing, crating, moving and storage of household goods. The IFB bid schedule stated that the services were to be performed “during the period 1 February 2002, or date of subsequent award if subsequent thereto, through 31 January 2003.” IFB § B, Bid Schedule, at 3. The IFB also stated that the “period of performance for any contract awarded shall be twelve (12) months from effective date,” IFB § F, Period of Contract Clause, at 7, and that services to be provided under the contract would be ordered by issuance of task orders which “may be issued from twelve months from date of issuance of contract.” IFB § I, Ordering Clause, at 14. The IFB incorporated by reference the contract clause at Federal Acquisition Regulation (FAR) § 52.222-41, “Service Contract Act of 1965, as Amended,” and included various wage determinations for the areas to be serviced by the contract.

Bid opening was originally scheduled for February 19, 2002, but was repeatedly extended due to numerous rounds of questions by prospective bidders and an agency-level protest. Four bids, including Paragon's, were received at the October 23 bid opening. Paragon and the other apparent low bidders were asked to verify their bid prices. Ultimately, the Army concluded that Paragon was the low bidder under several schedules and another bidder was low under another four schedules.

On December 9, the contracting officer canceled the IFB because she determined that the contract performance period would end on January 31, 2003 and she was concerned that bidders may not have bid based on the same performance period (12 months versus through January 31), and because the Service Contract Act wage determinations included in the IFB were outdated. Agency Report, Tab P, Contracting Officer's Determination to Reject All Bids Received and to Cancel Solicitation, Dec. 9, 2002; Tab EE, Contracting Officer's Memorandum for Record, Jan. 2, 2003.

On December 20, the Army issued the RFQ seeking quotes for the transportation services through March 31, 2003.

Paragon protests that the Army did not have a compelling reason to cancel the IFB after bid opening and to issue an RFQ for the same services. Specifically, Paragon complains that on October 22 (prior to bid opening) Paragon asked the agency what the performance period would be under the IFB, and was informed that it would be for 12 months. Paragon contends that "all of the bidders submitted their sealed bid[s] based upon what was to be a 12-month contract." Protester's Comments at 2.

Because of the potential adverse impact on the competitive bidding system of cancellation after bid prices have been exposed, a contracting agency must have a compelling reason to cancel an IFB after bid opening. FAR § 14.404-1(a)(1); Days Inn Marina, B-254913, Jan. 18, 1994, 94-1 CPD ¶ 23 at 2. A compelling reason to cancel a solicitation exists where material solicitation terms are ambiguous or in conflict. P.J. Dick, Inc., B-259166, B-260333, Mar. 6, 1995, 95-1 CPD ¶ 131 at 4. Contracting officials have broad discretion to determine whether a compelling reason to cancel exists, and our review is limited to considering the reasonableness of that decision. H. Angelo & Co., Inc., B-260680.2, Aug. 21, 1995, 95-2 CPD ¶ 74 at 3.

Here, we find that the Army reasonably concluded that it had a compelling reason to cancel the IFB after bid opening. The IFB contained conflicting terms with respect to the contract performance period, which is a material solicitation requirement. See The Ryan Co., B-275304, Feb. 6, 1997, 97-1 CPD ¶ 62 at 3 n.1. The bid schedule stated that the performance period would expire January 31, 2003 (which was only 3 months after the October 23 bid opening date), but the IFB stated in other clauses that the period of performance would be 12 months from the date of award. The IFB also incorporated by reference the standard "Order of Precedence--Sealed Bidding" clause, FAR § 52-214-29, which provides that solicitation inconsistency are to be

resolved by giving precedence in the following order: (1) bid schedule; (2) representations and instructions; (3) contract clauses; (4) other documents, exhibits and attachments; and (5) specifications. Application of the Order of Precedence clause indicates that, as argued by the Army, any contract awarded under the IFB would have expired on January 31, 2003.

Paragon complains that it asked the agency before bid opening for clarification of the contract performance period and was informed that the performance period would be 12 months from date of award. This only indicates, however, that Paragon itself recognized that there was an inconsistency in the material solicitations terms. Furthermore, the agency's advice that was apparently given only to Paragon did not amend the IFB to correct this inconsistency. See FAR § 14.208 (solicitation amendments should be written and must be furnished to all prospective bidders). In this regard, apart from Paragon's speculation, there is no evidence of what other bidders understood the contract performance period to be.

We do not think that the Army was required to award contracts under this IFB with the intention of modifying the contract to extend the performance period from January 31, 2003 for another 10 months in order to realize a 12-month performance period. Furthermore, given that the wage determination contained in the IFB is out of date, modifying the contract after award may require that a new wage determination be applied to the contract, see FAR § 52.222-41(c)(2)(iv)(B), which may result in contract claims against the agency. We agree with the contracting officer that the agency is not required to speculate as to what the contract price for these services will be.

Paragon also complains that the Army should not have issued the RFQ for these same services pending our decision in Paragon's protest of the cancellation of the IFB. Given our finding that the Army had compelling reason to cancel the IFB after bid opening, we have no basis to object to the agency's issuance of the RFQ to obtain these services for 3 months.

The protests are denied.

Anthony H. Gamboa
General Counsel