



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Eastman Kodak Company

File: B-271009

Date: May 8, 1996

John A. Howell, Esq., Ross & Hardies, for the protester.
Terence W. Carlson, Esq., Department of Transportation, for the agency.
Tania L. Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Contracting agency reasonably canceled a request for quotations where it determined—after reviewing an agency-level protest, the solicitation's specifications, and the quotations received—that the specifications might not reflect the agency's minimum needs, and where relaxed specifications might result in cost savings, as well as increased competition.

DECISION

Eastman Kodak Company protests that request for quotations (RFQ) No. DTOS59-96-Q-3030, issued by the Department of Transportation (DOT) for copier equipment, was unreasonably canceled.

We deny the protest.

The RFQ requested quotations for copier equipment and maintenance under a multiple award Federal Supply Schedule contract. Firms were to provide pricing for 10 high-speed copier machines in accordance with various minimum specifications, as well as pricing for maintaining the copiers over a 60-month period. One component of the maintenance pricing was a basic copy allowance, expressed in terms of cents per page at a given number of pages—this component would be evaluated on the basis of 150,000 copies per machine, per month. Award would be made to the firm quoting the lowest overall price.

DOT determined that three of the seven quotations submitted did not meet the RFQ's minimum specifications. Of the remaining four quotations, Kodak's was the lowest-priced. The contracting officer prepared and signed a purchase order to Kodak but, on that same day, DOT received an agency-level protest from one of the unsuccessful vendors complaining that certain specifications unduly restricted

competition.¹ The director of acquisition services instructed the contracting officer not to make award to Kodak, and began a review of the matter. After meeting with the program office and procurement staff, and reviewing the protest and the RFQ's specifications, he concluded that those specifications might be too restrictive; that the stated method of evaluating the copy usage cost was not in the best interest of the government; and that the agency should have used a best value approach to the acquisition. After the solicitation was canceled, Kodak filed this protest.

A contracting agency need only establish a reasonable basis to support a decision to cancel an RFQ. Shasta Transfer & Storage, B-261172, July 28, 1995, 95-2 CPD ¶ 48; Tony Ingoglia Salami and Cheese, Inc., B-244452, Sept. 23, 1991, 91-2 CPD ¶ 268. A reasonable basis to cancel exists when a new solicitation presents the potential for increased competition or cost savings. G.K.S. Inc., 68 Comp. Gen. 589 (1989), 89-2 CPD ¶ 117; Bell Indus., Inc., B-233029, Jan. 25, 1989, 89-1 CPD ¶ 81. The fact that the cancellation occurred after Kodak was identified as the awardee does not by itself evidence that the cancellation was improper; an agency may properly cancel a solicitation no matter when the information precipitating the cancellation first surfaces or should have been known, even if the solicitation is not canceled until after quotations have been submitted and evaluated.² See PAI Corp. et al., B-244287.5 et al., Nov. 29, 1991, 91-2 CPD ¶ 508. The record shows that the agency's justifications for canceling the solicitation were reasonably based.

An agency may cancel a solicitation if it materially overstates the agency's requirements and the agency desires to obtain enhanced competition by relaxing the requirements. HBD Indus., Inc., B-242010.2, Apr. 23, 1991, 91-1 CPD ¶ 400. DOT's review of the agency-level protest and the RFQ's specifications raised concerns that those specifications might overstate the agency's minimum needs. The unsuccessful vendor questioned the justification for requiring the copiers to have an automatic

¹This same vendor, whose quotation was rejected for failing to meet the RFQ's minimum specifications, had raised similar concerns prior to the closing date for submission of quotations. The contracting officer states that, at that time, he concluded the requirements were supported.

²Kodak incorrectly asserts that the contracting officer's mere act of preparing and signing the purchase order gave rise to a binding contract. A quotation is not an offer and, consequently, cannot be accepted by the government to form a binding contract. Federal Acquisition Regulation § 13.108(a). Issuance by the government of an order for supplies or services in response to a supplier's quotation does not establish a contract. Id. A contract comes into existence only after acceptance of the order by the supplier. Federal Acquisition Management Training Serv., B-248871; B-248873, Sept. 28, 1992, 92-2 CPD ¶ 214. Such acceptance did not occur here.

computer forms feeder, considering that they will be used in a walk-up copy center environment, as well as the requirement that the copiers produce 85 copies per minute--the vendor asserted that DOT's copier manager had told the firm that 75 copies per minute met the agency's needs. DOT concluded that a customer survey of the agency's users was needed to determine the agency's actual minimum needs.³ Kodak does not address the materiality of these requirements, and we have no basis to discount the agency's concern that they may be overstated.

While Kodak asserts that the agency failed to engage in advance planning, the contracting officer states that the requirement was coordinated with the program office responsible for copiers, as well as with procurement staff, and that technical staff reviewed the requirement before its issuance. In any event, the requirement to use advance planning in order to obtain full and open competition does not mean that the government guarantees that its solicitations are completely free of errors that could be detected by advance planning; agencies are not precluded from canceling an RFQ where, as here, it does not reflect the agency's needs. See Americorp, B-225667, Apr. 14, 1987, 87-1 CPD ¶ 404. As for Kodak's objection that DOT should not have canceled the solicitation based on its "mere speculation" that it might not reflect actual agency needs, certainty in this area is not required. Based on the record here, including the fact that three of the seven quotations received were rejected as not meeting the minimum specifications, relaxing the specifications presents the potential that competition will be increased, and therefore supports the cancellation. See Xactex Corp., B-247139, May 5, 1992, 92-1 CPD ¶ 423. Once DOT was cognizant that increased competition and cost savings were possible, given a revision of the solicitation's terms and conditions, it properly could cancel the RFQ. G.K.S. Inc., supra.

The agency also was concerned that the RFQ's stated basis for evaluating the copy usage cost would result in excessive costs to the agency because the figure to be used, 150,000 copies per machine, per month, did not accurately describe its needs. Vendors were to provide a cents per page price for the basic copy allowance, and could provide a rate for copies in excess of 150,000 per machine, per month. Kodak's quotation included an excess copy charge. The agency reviewed its copier machine usage data for the most recent fiscal year to ascertain the impact of this excess copy charge. The data shows that 19 of 42 copier machines averaged an annual volume in excess of 150,000 copies per month, and that individual copiers exceeded this level in 242 of 504 months, often by a significant margin. DOT

³While Kodak argues that the survey is too generalized to be of "probative value" in determining the agency's actual minimum needs, our review of the survey shows that it is sufficient for its intended purpose.

asserts that revising the solicitation to evaluate the copy usage cost using the figure of 200,000 copies per machine, per month, a figure more reflective of its actual needs, will result in a cost savings.

Kodak counters that only one of the specific copier machines to be replaced by the copier machines at issue here had an average rate of more than 150,000 copies in the last year. However, in addition to the fact that several of these copier machines produced more than 150,000 copies in a number of individual months, Kodak overlooks DOT's concern that utilizing the 150,000 copy per month level for the evaluation will deprive the agency of its flexibility to move copiers around to satisfy demand--additional cost will be incurred if the Kodak copiers are moved to an area where usage exceeds 150,000 copies per month. Considering the heavy usage rate of a number of DOT's copier machines, and the likelihood that at least some of these machines might be moved over the 5-year period anticipated here, we cannot conclude that the agency's concern is unreasonable.

Finally, DOT states that it intends to reexamine the type of solicitation it uses for this procurement to emphasize a "best value" approach in order to consider such things as cost of service and maintainability, commonality of supplies, and storage space. This consideration provides another basis for cancellation of the RFQ since cancellation is also warranted where the agency determines that cost savings may be realized by utilizing another procurement method or revised solicitation terms, so long as this determination does not arise from a lack of procurement planning or otherwise originate as a result of bad faith on the agency's part (neither of which is a factor here). See Budney Indus., B-252361, June 10, 1993, 93-1 CPD ¶ 450.

The protest is denied.

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