



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: American Overseas Book Company, Inc.

File: B-276675

Date: July 10, 1997

Cicely P. Marks for the protester.

Frank W. Miller, Esq., Paul D. Warring, Esq., Edwin A. Davis, and Jerry W. Aldridge, Department of the Air Force, for the agency.

Jeanne W. Isrin, Esq., David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest against cancellation of purchase order is denied where item description in request for quotations misstated the agency's actual needs; although awardee's quotation reflected agency's actual needs, other firms submitted quotes based on the stated description, and therefore were prejudiced by the error.

DECISION

American Overseas Book Company, Inc. (AOBC) protests the Department of the Air Force's cancellation of a purchase order (No. F49642-97-P0401) issued to AOBC under request for quotations (RFQ) No. F49642-97-QS164 for specified books.

We deny the protest.

The RFQ, issued through the Electronic Data Interchange (EDI), contained two line items (CLIN): CLIN 0001, for 125 copies of "Book, Priorities--The Pathway to Success," and CLIN 0002, for 125 copies of "Book, Developing The Leaders Around You." Quotations were received as follows:

	CLIN 0001	CLIN 0002	Total
Firm A	\$ 400.00	\$1,437.50	\$ 1,837.50
R.G. Associates (RGA)	\$ 437.50	\$1,431.25	\$ 1,868.75
Firm B	\$ 480.00	\$1,386.25	\$ 1,866.25
AOBC	\$13,493.75	\$1,312.50	\$14,806.25

The disparity between the three lowest CLIN 0001 prices and the government estimate led the contracting officer to question the item description, whereupon he called the publisher and learned that the item desired was actually a book/video set, rather than simply a book, as had been stated in the RFQ. Because only AOBC's quotation appeared to be based on the actual desired item, the contracting officer issued a purchase order to AOBC through EDI for both items (AOBC's CLIN 0002 price was low). In accordance with its normal procedure, EDI automatically forwarded the name of the successful firm and its quote to the other offerors.

Subsequently, another firm objected to the rejection of its quotation on the ground that its CLIN 0001 price for the book alone reflected the requirement as stated in the RFQ, and rejecting its CLIN 0001 quotation for failing to meet the agency's unstated actual needs deprived the firm of a fair opportunity to compete. The contracting officer agreed that the low quotations should not have been rejected based on unstated needs, and thus canceled the purchase order. (The CLIN 0002 portion of the purchase order had to be canceled along with CLIN 0001 because AOBC submitted its quotation on an "all or none" basis.) Thereafter, the agency issued a replacement RFQ (No. F49642-97-QS222) with a CLIN 0001 purchase description calling for a book/video set rather than only a book (the publisher's name also was included). RGA's quotation was low for this second RFQ.

AOBC maintains that the cancellation of the original purchase order was unjustified, and that the issuance of the second RFQ resulted in an impermissible auction, since its price on the first RFQ was exposed in the EDI award announcement.

Where a request for quotations invites competition, vendors must be given sufficient detail to allow them to compete intelligently and on a relatively equal basis; the agency's description of its needs must be free from ambiguity and describe the agency's minimum needs accurately. Haworth, Inc.; Knoll N. Am., Inc., 73 Comp. Gen. 283, 286 (1994), 94-2 CPD ¶ 98 at 5. Where an RFQ fails to set forth the agency's actual minimum needs, the RFQ should be revised and new quotes solicited to ensure that all firms are afforded an equal opportunity to compete based on the same set of requirements. Dictaphone Corp., B-254920.2, Feb. 7, 1994, 94-1 CPD ¶ 75 at 3; New Brunswick Scientific Co., Inc., B-246291, Feb. 3, 1992, 92-1 CPD ¶ 141 at 2-3.

It is undisputed that the RFQ in this case failed to set forth the agency's actual needs--it incorrectly described the item required as a book of a specific title, rather than as the required book/video set, i.e., the same book plus an accompanying videotape. Further, it is clear, and also undisputed, that, as a result of the misdescription, all offerors other than AOBC quoted prices for the book alone (as demonstrated by their quotes, which were significantly lower

than the government estimate, the publisher's suggested list price for the book/video set, and AOBC's quote). As the firms which relied on the RFQ description therefore essentially were deprived of an opportunity to quote a price for the agency's actual requirement--so that the competition between them and AOBC was not based on the same set of requirements--the agency properly canceled the purchase order in favor of a new competition based on an accurate statement of its needs.

Cancellation of a solicitation after disclosure of prices does not create an impermissible auction where, as here, the cancellation is otherwise justified. See Consolidated Indus., Inc., B-256278; B-256278.2, June 3, 1994, 94-1 CPD ¶ 343 at 3-5. Thus, the fact that AOBC's prices had been disclosed did not render the cancellation and resolicitation improper.

AOBC claims that it notified the contracting officer before the closing time that it was able to locate only a book/video set under the given title, and that contracting officials therefore could, and should, have issued a clarifying amendment prior to the closing date. The contracting officer denies that AOBC provided such notice, stating that AOBC only requested the name of the publisher, which he provided, and that he did not learn of the erroneous item description until he contacted the publisher following closing. AOBC has furnished no evidence establishing that it provided the claimed notice to the agency. In any case, a procuring agency's failure to correct a solicitation deficiency before disclosure of prices does not preclude the agency from subsequently canceling the solicitation to correct the defect. See Adrian Supply Co., B-246207.2; B-246207.3, Mar. 13, 1992, 92-1 CPD ¶ 282 at 3-4 (concerning an invitation for bids).

AOBC objects to the award under the second RFQ on the ground that RGA's quotation for CLIN 0001 failed to take into account the publisher's policy of providing a 40-percent discount to retail bookstores which agree to sell the products at the suggested retail price; the protester essentially argues that, since RGA's quoted price was below the suggested retail price, it was inconsistent with the publisher's discount agreement and that, if RGA were unable to obtain the discount, RGA would have to perform at a loss. This argument is without merit. Whether RGA's performance would be inconsistent with its agreement with the publisher concerns a dispute between private parties, which generally is not a matter for consideration under our bid protest process. Advanced Communications Sys., Inc., B-271040; B-271040.2, June 10, 1996, 96-1 CPD ¶ 274 at 7. Further, submission and acceptance of below-cost offers are not legally objectionable; whether a potential contractor can meet contract requirements in light of its low price concerns the contracting agency's affirmative responsibility determination, which our Office generally

does not review. Automated Data Management, Inc., B-234549, Mar. 2, 1989, 89-1 CPD ¶ 229 at 4. (In any case, we note that AOBC's price for CLIN 0001 likewise is below the suggested retail price.)

AOBC also maintains that RGA impermissibly conditioned its quotation on receiving advance payment for the items. However, we have reviewed RGA's quotation and find no such condition.

The protest is denied.

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