



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Grot, Inc.

File: B-276979.2; B-277463

Date: August 14, 1997

Andrew J. Kilpatrick, Jr., Esq., Hickman, Sumners, Goza & Gore, for the protester.
Joseph A. Gonzales, Esq., and Larry E. Beall, Esq., Department of the Army, for the agency.

Linda C. Glass, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly canceled invitation for bids after bid opening where the solicitation specifications did not adequately set forth the agency's requirements, and prior to bid opening, the agency had provided only one of several offerors with informal clarifications regarding the actual requirements.

DECISION

Grot, Inc. protests the cancellation after bid opening of invitation for bids (IFB) No. DACA01-97-B-0033, issued by the Department of the Army, Corps of Engineers, and the resolicitation of the same requirement for upgrade of fire protection at Arnold Air Force Base, Tennessee.

We deny the protests.

The procurement is for the addition and/or replacement of fire protection devices and fire alarm systems in several buildings at Arnold Air Force Base. The specifications included requirements for heat and smoke detectors, fire alarm panels, horns and miscellaneous appurtenances. The successful firm was to perform all work and furnish all plant, labor, equipment, and materials required by the specifications and drawings. The IFB consisted of 17 base bid items and 6 option items, each separately priced. The IFB contemplated the award of a fixed-price contract to the responsible bidder submitting the low responsive bid on the base items and all options items.

Four bids were received by the April 29 bid opening, ranging from \$1,322,807 to \$3,017,218. The government estimate was \$1,285,214. Grot's bid of \$2,282,000 became low after the apparent low bidder claimed a mistake in bid and was allowed to withdraw its bid. When the agency compared the three remaining bids with the

government's estimate, it concluded that none of them was in the "awardable range" (presumably meaning that none was at a reasonable price).

The agency subsequently examined the solicitation and determined that the specifications were ambiguous. For example, the agency concluded that the following specifications were defective:

1. Specification 16721 did not clearly define the scope of work and ambiguities existed between plans and specifications.
2. Neither the drawings nor specifications clearly indicate the scope of work in testing the existing fire alarm/detection system.
3. The scope of work for the removal of lead paint was not clearly defined in the solicitation.
4. The scope of work was not clearly defined for additions to or replacement of existing fire alarm/detection systems devices for numerous buildings.
5. The drawing for Building 895 required a new fire alarm control panel and radio transmitter, but did not indicate the number of zones.

Accordingly, the agency determined that the system design had to be clarified to ensure accurate understanding of the scope of work by bidders and concluded that this constituted a compelling reason to cancel the IFB. The bidders were notified of the cancellation by letter dated May 28. The specifications were revised and a new solicitation was issued on June 20 with a July 22 bid opening date.¹ Grot asserts that the agency lacked a compelling reason to cancel because the IFB did not contain ambiguous or defective specifications. The protester maintains that the plans and specifications were sufficiently clear to permit the government to estimate the cost of the work, as well as to permit four firms to formulate and submit bids on the project.

¹Grot also protests the issuance of this new solicitation, arguing that its issuance is premature, illegal, and unauthorized by the Federal Acquisition Regulation (FAR). The agency reports that, while it intends to accept bids and open them, it will not award a contract until after resolution of the original protest. While we note that the FAR does not prohibit the issuance of a new solicitation and the opening of bids under these circumstances, this is in any event an issue relating to the propriety of an agency's implementation of a protest stay, which is not subject to review by our Office. Stevens Technical Servs., Inc., 72 Comp. Gen. 183, 192 (1993) 93-1 CPD ¶ 385 at 12.

While Grot appears to concede that the resolicitation issued on June 20, for which the government estimate is \$2,000,000, addressed these ambiguities and also added a requirement for a supervisor, Grot takes the position that these clarifications and changes are insignificant. With respect to the clarification of the scope of required lead paint abatement activity by the contractor, Grot contends that this simply codifies its understanding of this provision. It is the protester's position that the scope of lead paint abatement is clearly defined by the specifications, which require only the area of paint which is disturbed to be abated. The protester argues that it is not necessary to clarify that the system in place must be tested prior to upgrade since no bidder has suggested any other interpretation of this provision, and there is no need or requirement that this "clarification" be made. Additionally, the protester argues that the necessity for additions or replacement of devices is properly the subject of change orders when necessary and that the agency's reference to alleged ambiguities concerning zones is meritless. The protester maintains that it is entitled to the award as the low responsive bidder.

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. Federal Acquisition Regulation § 14.404-1(a)(1). The regulations authorizing cancellation after bid opening specify that inadequate or ambiguous specifications may constitute a compelling reason to cancel an IFB. FAR § 14.404-1(c)(1). While the contracting officer has broad discretion to determine whether or not compelling circumstances for cancellation exist, our Office will review that decision to ensure that it was reasonable. Phil Howry Co., B-245892, Feb. 3, 1992, 92-1 CPD ¶ 137 at 2.

Here, the determination to cancel the IFB was reasonable because the specifications included a substantial number of material ambiguities, as outlined above. While the protester now asserts that the specifications are clear and unambiguous, the record establishes that, in fact, the protester believed otherwise at the time it was preparing its bid. Thus, on several occasions prior to submitting its bid, the protester sought clarification from the agency with respect to numerous specifications, including some that formed the basis for the agency's later determination that the specifications were ambiguous. For example, the protester sought detailed clarification concerning certain areas where no heat detectors were shown in the IFB diagrams. The protester also complained that there were no zones shown for existing devices in some buildings or for any devices in other buildings. The protester further complained that, while the specifications stated that the fire detection and internal alarm system shall be configured in accordance with NFPA72, the drawings did not reflect a design showing compliance with NFPA72 and therefore it was unclear whether a firm should bid the project to bring each building up to NFPA72 compliance.

Grot was sufficiently leery about what it perceived to be specification deficiencies that, by letter dated April 3, the protester stated that it had "grave concern that a project of this size and nature has not been more thoroughly designed," and argued that "allowing the project to be bid as designed would only allow the contractor the availability to make a very wild guess as to what the [government] wants and needs and thus his pricing would reflect this." While the agency states that it orally responded and apparently satisfied the protester's concerns, the agency never provided a written response and never amended the solicitation in order to clarify the requirements for all potential bidders.

The protester's own actions in seeking and obtaining clarification of numerous specification deficiencies prior to bid opening, many of which could have a significant impact on performance or pricing, confirm the propriety of the agency's determination that the original specifications were materially defective. While the agency may have clarified the requirements for the protester, it did not ensure that other bidders obtained an accurate description of the agency's actual requirements. Because the solicitation as issued did not adequately reflect the government's needs and the agency's clarifications were improperly provided to only one offeror, FAR § 14.208(c), cancellation of the solicitation on the basis that the specifications were inadequate was reasonable and proper.

The protests are denied.

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