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United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: C-Cubed Corporation

File: B-289867

Date: April 26, 2002

Eric Moe, Esq., for the protester.

Roy E. Potter, Esq., Government Printing Office, for the agency.

Jacqueline Maeder, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Contracting agency properly canceled invitation for bids after opening where it reasonably determined that solicitation's estimates no longer represented its actual needs.

DECISION

C-Cubed Corporation protests the post-bid opening cancellation of invitation for bids (IFB) No. B541-S, issued by the Government Printing Office (GPO) for production and distribution of certain digitized documents. C-Cubed, the low bidder, contends that GPO did not have a compelling reason to cancel the solicitation, and that it therefore should have been awarded the contract.

We deny the protest.

The IFB, issued November 7, 2001, contemplated the award of a fixed-price requirements contract for a base year, with 1 option year, for the production of documents from electronic files and/or camera-ready copy. The contractor was to process and copy the documents to 3.5-inch diskettes and/or CD-ROMs, or make them available at Internet sites; prepare the identification labeling for the diskettes and CD-ROMs; pack the finished products; and ship the products to the requesting activity. The IFB listed 10 contract line items (CLIN)--6 under section I (data entry requirements), 2 under section II (mailing requirements), and 2 under section III (additional operations)--and required bidders to submit a unit price for each. IFB, Section 4--Schedule of Prices, at 13-14.

CLINs 5 and 6 under section I requested unit prices for the production of each 3.5-inch diskette and each CD-ROM, and CLINs 1 and 2 under section II requested unit prices for producing and affixing mailing labels for each diskette and each CD-ROM. Extended prices and the low bid were to be determined by multiplying the unit prices by the estimated quantities in IFB Section 3 (Determination of Award). The estimated quantities (as relevant here) were: 125,000 diskettes, 7,000 CD-ROMs, 50,000 mailing labels for the diskettes, and 50,000 mailing labels for the CD-ROMs.

GPO received four bids by the November 27 bid opening date. C-Cubed's bid was low at \$23,225. The other three bids were \$108,760.75, \$141,570, and \$282,150. Because of the disparity in prices, GPO asked C-Cubed, which is the incumbent contractor, to confirm its bid. Agency Report (AR) at 2. After C-Cubed did so, the agency again asked the protester to review its prices, with specific emphasis on its "no charge" for four CLINs, including CLIN 5 under section I (production of 125,000 diskettes), and both CLINs under section II (preparing and affixing labels for mailing diskettes and CD-ROMs). Protest, exh. 1, C-Cubed Bid, at 14-15. The agency was particularly concerned about C-Cubed's "no charge" for CLIN 5, since it was the likely highest dollar value CLIN. AR, exh. D, Contracting Officer's Memorandum, at 1. C-Cubed again confirmed its prices, explaining that it bid "no charge" for the production of the diskettes because "[b]ased on the current usages under this contract and current technology requirements," this item "is rarely if ever used." Protest, exh. 4, at 1. C-Cubed further stated that it bid "no charge" for the diskette mailing labels because there was no demand for them, and that it included the CD-ROM labeling costs in the CD-ROM production costs. Id.

The agency reviewed the orders that had been issued under the current contract, and confirmed that CD-ROMs, not diskettes, were the major item ordered the previous year. AR at 2. The agency therefore determined that the IFB estimates did not accurately reflect its needs. The agency also found that C-Cubed would not have been the low bidder if corrected estimates were applied to the bidders' unit prices. Id. GPO concluded that the "discrepancies identified in the Determination of Award figures are significant in nature" and "do not reflect the actual work to be performed on the contract, therefore, the actual cost of the contract to the Government could not be determined." AR, exh. E, Cancellation and Readvertisement, at 1. Accordingly, GPO canceled the IFB on January 24, 2002. Subsequently, it issued a revised, undated solicitation in which the estimate for diskettes was reduced from 125,000 to 1,000, the estimate for CD-ROMs was increased from 7,000 to 50,000, and the estimates for preparing mailing labels for the diskettes and the CD-ROMs were reduced from 50,000 to 500 and 50,000 to 40,000, respectively.

C-Cubed argues that the cancellation was improper. The protester contends that, because the IFB contemplated award of a requirements-type contract, GPO was not obligated to order any particular quantity and, consequently, any misstated estimates did not provide a compelling reason to cancel the IFB. Protest at 2.

GPO's Printing Procurement Regulation (PPR) requires that there be a compelling reason to cancel an IFB after bid opening. PPR, Chapt. XII, § 2; see News Printing, Inc., B-274773.2, Feb. 11, 1997, 97-1 CPD ¶ 68 at 2. (This corresponds to Federal Acquisition Regulation § 14.404-1, to which GPO, as a legislative branch agency, is not subject.) Determining whether a compelling reason exists involves the exercise of the contracting agency's judgment; we review such a determination only to ensure that it is reasonable. News Printing, Inc., *supra*.

GPO's decision to cancel the solicitation here was reasonable, since the record shows that the agency's needs are grossly different from those reflected in the canceled IFB, and that using the corrected estimates would change the outcome of the competition. The reasonableness of correcting the estimates is only underscored by C-Cubed's status as the incumbent, since it was uniquely positioned to recognize and take advantage of the inaccuracies in the initial estimates. The fact that the government is not obligated under a requirements contract to purchase any particular quantity, as C-Cubed asserts, has no bearing on the propriety of the cancellation. This is because, absent reasonably reliable quantity estimates, firms have no reasonable basis to prepare their bids, and the government cannot determine which bid will actually result in the low overall cost of performance. Beldon Roofing & Remodeling Co., B-277651, Nov. 7, 1997, 97-2 CPD ¶ 131 at 7. We conclude that the substantial change in the estimated quantities provided a reasonable basis for canceling the solicitation.

The protest is denied.

Anthony H. Gamboa
General Counsel