

**United States Government Accountability Office
Washington, DC20548**

Decision

Matter of: Corcel Corporation

File: B-311332; B-311332.2

Date: June 13, 2008

Ray Corona for the protester.

Warren D. Leishman, Esq., Agency for International Development, for the agency.

Eric M. Ransom, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency reasonably concluded that it had a compelling reason to cancel an invitation for bids after bid opening where the solicitation's specifications were inadequate to meet the agency's needs.

2. Agency did not improperly make an award during the pendency of the protest where the order was issued under an existing indefinite-delivery/indefinite-quantity contract for a different type of product.

DECISION

Corcel Corporation protests the decision of the United States Agency for International Development (USAID) to cancel, after the opening of the bids, that portion of invitation for bids (IFB) No. 294-2008-001 seeking bids for valves. Corcel also protests the agency's replacement procurement for the valves under an existing indefinite-delivery/indefinite-quantity (ID/IQ) contract.

We deny the protests.

BACKGROUND

The challenged procurement is for approximately 62 kilometers of pipe and pipeline supplies intended to provide drinking water to the south Nablus villages in the West Bank. According to the agency, there are currently no fixed water supplies in the 10 villages targeted by this procurement. The installation of this pipeline will provide over 100,000 households with better access to clean water.

USAID issued the IFB on December 17, 2007, soliciting sealed bids for three “bills of quantities” (BOQ): pipes, valves, and fittings. Bidders were free to bid on any or all items listed on these three BOQs. IFB at L.8. The IFB included a preference for United States suppliers. IFB Amendment Notice 1.

As relevant to this protest, “BOQ B” of the solicitation set forth the requirement for valves. This consisted of seven types of Class 300 buried gate valves, 215 in total. With regard to the specific technical requirements, BOQ B stated that a bidder must “[s]upply flanged Gate Valves with all required accessories and parts for buried applications.” IFB, Attachment 3D, BOQ B, at 1. In detailed technical specifications attached to BOQ B, USAID also listed further requirements for Class 300 gate valves for buried applications. These specifications stated that Class 300 valves must be “[s]uitable for buried water service,” and that the approved manufacturers and products were “Velan” valves, or equal. Id. at 5.

The BOQ and technical specifications were provided to USAID engineers by the Palestinian Water Authority (PWA). Contracting Officer’s Statement of Facts, at 2. The contracting officer has represented that these specifications are standard and widely used in the West Bank, and that since the year 2000, most local organizations have been using these specifications. Id. As a measure of quality assurance, USAID engineers sent the BOQ and specifications to CH2M Hill, USAID’s construction management firm in the West Bank. Engineer’s Statement of Facts, at 2. USAID and CH2M Hill suggested minor changes in the specifications, and obtained the PWA’s agreement before incorporating BOQ B and specifications into the solicitation package. Id.

Three firms submitted bids in response to the IFB by the January 18, 2008 bid opening. Two of the firms bid on all items on the three BOQs, while the third firm, Corcel, bid on BOQ B only. With regard to BOQ B, one firm bid a foreign product, and among the two firms bidding United States products, Corcel bid the lowest price. Contracting Officer’s Statement of Facts, at 2-3. However, upon review, USAID’s engineers determined that Corcel had not provided sufficient information in its bid to enable USAID to determine whether the proposed valves met the required specifications. Engineer’s Statement of Facts, at 2.

On January 28, USAID requested that Corcel provide additional information to confirm that its offered valves were suitable for buried water service, and advised Corcel that a “non-rising stem valve is the only type valve that should be used in buried applications.”¹ Engineer’s Statement of Facts, Tab A. Corcel responded on

¹ In a non-rising stem (NRS) gate valve, the stem is threaded into a shaft in the gate. Engineer’s Statement of Facts, at 3. As the hand wheel on the stem is rotated, the gate travels up or down the stem on the threads, while the stem itself remains vertically stationary. Id. In a rising stem (RS) valve, the stem is attached to, but not

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the same day that it proposed to provide “outside screw and yoke” Class 300 gate valves, and disputed that NRS valves were the only valves suitable for buried applications. Id., Tab B. Citing the BOQ and technical specifications, Corcel maintained that there was no requirement in the IFB that the Class 300 gate valves be NRS, and confirmed that its proposed custom valves were in full compliance with the requirement that all Class 300 valves be suitable for buried water service. Id. On January 30, Corcel sent USAID further information, including pictures, drawings, and diagrams.

USAID engineers shared this information with specialty engineers from the PWA and two U.S. engineering firms, including CH2M Hill. Id. at 3. All the engineers concluded that Corcel was offering RS valves. Id. On February 4, the PWA sent a letter to USAID stating that RS valves were not acceptable to the PWA, and that all buried application gate valves “should be non rising stem according to PWA technical specifications and standards.” Id., Tab D. Based on this concern, the contracting officer determined that the specifications needed review, and sent the specifications to another independent U.S. engineering firm. Contracting Officer’s Statement of Facts, at 3. That firm determined that the IFB had not clearly specified that the Class 300 gate valves were to be NRS. Id. The firm suggested that USAID consider adding an NRS requirement to its specifications. Engineer’s Statement of Facts, at 7. The contracting officer then determined that, with regard to BOQ B, the IFB was ambiguous and inadequate. On February 26, USAID informed the bidders that it was rejecting all bids for BOQ B and canceling that portion of the IFB because it had been determined that the specifications were inadequate, as they failed to state that NRS valves were required. Agency Report (AR), Tab 9.

Corcel filed its protest with our Office on March 6, alleging that the agency’s decision to cancel the solicitation was improper because the solicitation was not ambiguous and NRS valves were not necessary to meet the agency’s needs. Also in March, USAID began to pursue an alternative procurement for the required valves by issuing a task order to CH2M Hill under the firm’s existing ID/IQ contract for construction management services. The task order provided funding for the procurement of water valves for the south Nablus villages project, but only authorized CH2M Hill to conduct market research by soliciting and evaluating quotes. AR, Tab 11, at 2. CH2M Hill was required to request additional authorization from USAID before procuring the valves. Id.

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threaded into the gate. Id. As the hand wheel on this type of valve is turned, the stem itself rises out of the valve, thereby also raising the attached gate. Id. This type of valve is generally used where it is important to know on visual inspection whether the valve is open or closed. Id.

On March 18, Corcel learned from one of its manufacturers that CH2M Hill was soliciting quotes for valves for the south Nablus project. On March 20, Corcel filed a second protest, alleging that USAID was improperly circumventing the protest process and excluding Corcel from the bidding process by attempting to procure the required valves through CH2M Hill.

ANALYSIS

With regard to the cancellation of the IFB, a contracting agency must have a compelling reason to cancel an IFB after bid opening because of the potential adverse impact on the competitive bidding system of resolicitation after bid prices have been exposed. Federal Acquisition Regulation (FAR) § 14.404-1(a)(1); HDL Research Lab, Inc., B-254863.3, May 9, 1994, 94-1 CPD ¶ 298 at 5. Where a solicitation contains inadequate or ambiguous specifications, or otherwise does not contain specifications that reflect the agency's actual needs, the agency has sufficient reason to cancel. FAR § 14.404-1(c)(1); Days Inn Marina, B-254913, Jan. 18, 1994, 94-1 CPD ¶ 23 at 2. Contracting officials have broad discretion to determine whether a compelling reason to cancel exists, and our review is limited to considering the reasonableness of their decision. Chenega Mgmt., LLC, B-290598, Aug. 8, 2002, 2002 CPD ¶ 143 at 2.

USAID first contends that its decision to cancel BOQ B was reasonable because the specifications for Class 300 gate valves were ambiguous with regard to whether NRS or RS gate valves were required. USAID states that the omission of language specifying NRS valves likely arose because the shortcomings of RS valves in buried applications appeared self-evident to USAID's engineers and outside technical staff. AR, Tab 3, Memorandum, at 5. Thus, to these engineers, specifying that the project was for buried water lines meant that only NRS valves were suitable. USAID therefore argues that the specifications were ambiguous because its engineers interpreted the specification language to mean that only NRS valves would work, while to Corcel, the specification of a buried application did not eliminate RS valves from consideration.

Specifications must be sufficiently definite and free from ambiguity so as to permit competition on an equal basis. Hebco, Inc., B-228394, Dec. 8, 1987, 87-2 CPD ¶ 565 at 2-3. An ambiguity exists if a solicitation requirement is subject to more than one reasonable interpretation when read in the context of the solicitation as a whole. Phil Howry Co., B-245892, Feb. 3, 1992, 92-1 CPD ¶ 137 at 2-3. Based on our examination of the record here, we do not agree with the agency that the specifications were ambiguous in the context of the solicitation as a whole. Rather, as explained below, we conclude that Corcel's interpretation of the solicitation, as written, was the only reasonable interpretation.

The specification requirements for Class 300 gate valves, as relevant here, were limited to the statement that the valves must be suitable for buried service. However, the specification document attached to the BOQ also contained

requirements for other types of valves, and in a specification for lower pressure valves, the specification document explicitly required that the valves be “[s]uitable for buried service with non-rising stem.” AR, Tab 5, at 5 (emphasis added). By clearly requiring NRS valves in a specification for lower pressure buried gate valves, but not clearly requiring NRS valves for the Class 300 gate valve requirement, the solicitation suggested that any type of Class 300 gate valves suitable for buried service would be acceptable.

Furthermore, the specifications listed “Velan” as an approved manufacturer of the required Class 300 valves. As pointed out by Corcel, Velan does not manufacture a Class 300 NRS gate valve, although it does manufacture a Class 300 RS gate valve. Comments at 4. The agency does not dispute this fact.²

Under these circumstances, we think that Corcel’s interpretation of the specifications, that the valves needed only to be suitable for buried use and were not required to be NRS, is the only reasonable interpretation. Therefore, we conclude that there was no ambiguity in the specifications that would justify cancellation of BOQ B of the IFB.

USAID next contends that its decision to cancel BOQ B was reasonable because, if Corcel’s interpretation of the solicitation was the only reasonable reading, then the specifications failed to meet the agency’s needs for the intended project. We agree.

An IFB may be canceled after bid opening, and all bids rejected, where an award under the IFB would not serve the government’s actual needs, Eastern Technical Enter., Inc., B-281319, B-281320, Jan. 22, 1999, 99-1 CPD ¶ 17 at 2, and our Office will defer to the agency and to the technical expertise of its engineering personnel in defining the government’s needs. Corbin Superior Composites, Inc., B-242394, Apr. 19, 1991, 91-1 CPD ¶ 389 at 5; Kings Point Mfg. Co., Inc., B-210757, Sept. 19, 1983, 83-2 CPD ¶ 342 at 3. Accordingly, we will question that determination only where it is shown to have no reasonable basis. Id.

Although Corcel has zealously advocated the technical merits of its customized RS valves, we conclude from the record that an award under BOQ B of the IFB would not have met the agency’s needs, and that the cancellation of BOQ B of the IFB was therefore reasonable. Based on our review of the record, and specifically of the statements of the contracting officer, the USAID engineer, the PWA, and the independent engineering firms consulted by USAID, it is clear that all parties to the approval of the solicitation understood the specifications to require NRS gate valves. These parties understood NRS gate valves to be necessary to the project due to their

² The agency suggests that the listing of Velan as an approved manufacturer of the NRS Class 300 gate valves was an oversight, incorporated into the solicitation from a template that has been in use since at least the year 2000.

perceptions of the inherent shortcomings of RS valves in buried applications and their understanding of the PWA's technical standards, and clearly did not anticipate that a bidder would offer RS valves customized for buried applications.

According to the agency, standard off-the-shelf RS valves are not suitable for buried applications due to several concerns. First among these is that the threaded stem of a RS valve is at least partially outside the valve body itself, and if buried, would be directly exposed to dirt and debris that would jam and corrode the mechanism. Engineer's Statement of Facts, at 4. Second, RS valves have more maintenance issues as they require periodic lubrication, which would be impossible in the case of a buried valve. Id. Third, due to their rising mechanism, RS valves are greater in height than NRS valves, which imposes restrictions on their use, especially where pipelines are to be buried in roads. Id.

Corcel's customized valves claim to address the major shortcomings of RS valves in buried uses by equipping the standard RS valve with custom stem enclosures, sealed lubrication housings, and a separately manufactured valve box. However, these customizations do not allay all of the agency's concerns about the use of RS valves in buried applications, and introduce some additional concerns.

For example, the agency remains concerned about the lubrication needs of RS stem valves, and how those needs would be met once the valves were buried. Agency Technical Supplement, at 3. In response, Corcel has referred to its manufacturer's catalog sheet on "adapto-gear actuators" which are "fully enclosed light weight, maintenance free, bevel gear units for valves that require gearing to facilitate operation." Comments, at 8; Corcel Supplementary Response, at 4. Corcel highlights the assurance that these parts are "maintenance free." Id. However, this claim relates to the adapto-gear actuator, an accessory item, and not the RS valves themselves. See Comments, Tab 12. It is unclear that such an accessory, for valves that require gearing, would be suitable or necessary for the valves required under the BOQ. Protest, Tab 3, at 1. Furthermore, the agency is reasonably concerned that these customizations and accessories may themselves add an unnecessary maintenance burden on the PWA, and that the addition of such customizations and accessories will further exacerbate the height drawback inherent to RS valves. Agency Technical Supplement, at 3. Finally, despite Corcel's customizations, Corcel is still offering RS valves, which the agency is reasonably concerned will not be acceptable to the PWA. Contracting Officer's Statement of Facts, at 4; Engineer's Statement of Facts, Tab D.

In light of the foregoing concerns and the clear statement of the PWA that only NRS valves are acceptable, we think that the USAID engineering personnel had a reasonable basis to conclude that NRS valves were necessary to meet the agency's needs for this project. On that basis, and also considering the clear consensus that a requirement for NRS valves had been intended in pre-solicitation planning, we conclude that the agency had a compelling reason to cancel the BOQ B portion of the IFB.

With regard to Corcel's second protest, Corcel essentially alleges that the agency's issuance of a task order to CH2M Hill for the procurement of valves for the south Nablus project circumvents the competitive bidding process by excluding Corcel. As a preliminary matter, we note that agency has not yet issued the notice to proceed with the actual procurement of valves under the ID/IQ contract, and is withholding the issuance of that notice during the pendency of this protest. AR, Tab 3, Memorandum, at 8. Moreover, Corcel offers no support, and we see none, for its assertion that the agency's use of an existing ID/IQ contract is improper in this case. On the contrary, an ID/IQ contract, by definition, is to be used to place orders with the contractor for items within the scope of the contract, as USAID apparently plans to do here. See 41 U.S.C. § 253h(a) (2000); FAR § 16.504(a).

The protests are denied.

Gary L. Kepplinger
General Counsel