United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: USA Electronics

File: B-283269.2

Date: October 5, 1999

Paul D. Anderson for the protester.
Joshua A. Kranzberg, Esq., and John H. Eckhardt, Esq., Department of the Army, for the agency.
Jacqueline Maeder, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Cancellation of request for quotations for power assemblies is reasonable where agency determined that the solicitation failed to reflect its minimum needs.

DECISION

USA Electronics protests the cancellation of request for quotations (RFQ) No. DAAB07-99-Q-D161, issued by the U.S. Army Communications-Electronics Command (CECOM), for eight power assemblies. The protester asserts that the cancellation was motivated by the agency's desire to avoid issuing a purchase order to USA Electronics.

We deny the protest.

The RFQ was issued as a small business set-aside on June 18, 1999, under the simplified acquisition procedures in Part 13 of the Federal Acquisition Regulation.[1] Firms were to provide a unit price and total price for eight intermediate power assemblies, national stock number (NSN) 5895-01-197-4242, plus a unit and total price for an option quantity of an additional eight intermediate power assemblies. RFQ § B.

[1]Part 13 prescribes the policies and procedures for the acquisition of supplies and services, including construction, research and development, and commercial items, the aggregate amount of which does not exceed $100,000. FAR § 13.000.

Quotations were received from three vendors by the July 9 due date, of which USA Electronics's quotation of $1,250 per unit was low. Contracting Officer's Statement at 1. Because this quote was significantly lower than both the next low quote and the historical price, the agency notified USA Electronics that the firm may have made a mistake in the preparation of its quotation and requested that USA Electronics verify its quote. Agency Report, Tab 2, Letter from Agency to Protester 1 (July 13, 1999). After the protester responded that one of its vendor's quotes was incorrect and that USA Electronics's correct unit price was $8,742.01, Agency Report, Tab 3, Letter from Protester to Agency 1 (July 13, 1999), the Army requested that USA Electronics submit evidence to support the claim of mistake and its intended quote.[2] Agency Report, Tab 5, Letter from Agency to Protester 1 (July 22, 1999). In response, USA Electronics submitted four documents which the protester states show the misquoted and corrected part prices and USA Electronics's markup for each price. Agency Report, Tab 6, Letter from Protester to Agency (July 23, 1999).

Upon review, the contracting officer determined that the documents submitted by USA Electronics did not constitute clear and convincing evidence of a mistake or the intended price. However, before the agency notified the protester of this determination, the contracting officer received a procurement work directive from the item manager which significantly increased the number of power assemblies required by the agency.[3] Agency Report, Tab 7, Procurement Work Directive, at 1. The work directive also increased the option quantity. The contracting officer determined that the contract value for the increased quantity of power assemblies would be greater than the $100,000 simplified acquisition procedures ceiling. Based on the increased need, the anticipated contract value, and the contracting officer's belief that the increased requirement could result in better prices, the contracting officer determined to cancel the RFQ and resolicit under a revised solicitation. After the solicitation was canceled, USA Electronics filed this protest.

USA Electronics argues that rather than cancel the solicitation, the Army should issue a purchase order to the protester under the original RFQ based on its low corrected price, and obtain any needed additional quantity under the option clause.

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[2]While the Army was evaluating the alleged mistake in USA Electronics's quote, the protester filed a protest with our Office, objecting to the agency's issuance of a purchase order to any other vendor under the RFQ. On July 22, we dismissed this protest as premature because the Army had not yet decided whether to permit USA Electronics to correct the alleged mistake in its quotation.

[3]The Army has not yet synopsized the reprocurement and this decision does not disclose the specific number of intermediate power assemblies required because of the agency's stated concern about the possible impact of this advance procurement information on the competitive positions of the vendors.

The protester contends that FAR § 13.5[4] allows the Army to use simplified acquisition procedures for commercial items, as required here, for acquisitions up to $5,000,000. Thus, USA Electronics argues that CECOM's justification is improper and that cancellation was motivated by the agency's desire to avoid awarding to USA Electronics.

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 at 2; Tony Ingoglia Salami and Cheese, Inc., B-244452, Sept. 23, 1991, 91-2 CPD ¶ 268 at 3. A reasonable basis to cancel exists when there is a material increase in the quantity needed to satisfy the agency's requirements, Switlik Parachute Co., Inc., B-275539, Mar. 3, 1997, 97-1 CPD ¶ 113 at 3, or when a new solicitation presents the potential for cost savings. Eastman Kodak Co., B-271009, May 8, 1996, 96-1 CPD ¶ 215 at 4, recon. denied, B-271009.2, Oct. 7, 1996, 96-2 CPD ¶ 136.

Here, the Army's decision to cancel and resolicit was reasonable based on a material change in the scope of the requirement. The record shows that the Army's legitimate required quantity has materially increased and that, including the option quantity, the agency requires a significantly greater number of assemblies than was specified under the RFQ at issue. The protester's argument that the agency could use the option clause to order the additional units is without merit since exercise of the option would not permit the Army to obtain all of the currently required power assemblies. Moreover, because costs generally decrease as quantities increase, procuring the increased quantity under a new solicitation reasonably could be expected to result in a lower unit price than proceeding with the current RFQ. These considerations provide a reasonable basis for the agency's determination to cancel

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[4]FAR § 13.5 authorizes, as a test program, use of simplified procedures for the acquisition of supplies and services in amounts greater than the $100,000 simplified acquisition threshold but not exceeding $5,000,000, including options, where the agency reasonably expects that the offers will include only commercial items. FAR § 13.500(a).

and resolicit for the increased quantity, notwithstanding the protester's contention that the decision to cancel was a pretext to avoid issuing a purchase order to USA Electronics.[5]

The protest is denied.

Comptroller General
of the United States

[5]USA Electronics's reliance on the possibility of a $5,000,000 ceiling under FAR § 13.5 is misplaced. Specifically, while the regulation provides that agencies shall employ the simplified acquisition procedures authorized by the test program to the maximum extent practicable, FAR § 13.500(b), there is no indication that the subpart was applied in this procurement. In any event, we need not address this issue because, as explained above, we find reasonable the agency's determination to cancel and resolicit based on its increased requirement.