

Trans

DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

10,219

FILE: B-194050

DATE: May 18, 1979

MATTER OF: Roy's Rabbitry

DIGEST:

Cancellation of solicitation is proper where award will not result in contract which meets agency's minimum needs.

*DLG 11470*

*AGC 00846*  
Roy's Rabbitry (Roy) protests the rejection of its bid as nonresponsive and the subsequent cancellation of invitation for bids (IFB) No. DADA15-78-B-0070 issued by the Walter Reed Army Medical Center (WRAMC). The solicitation was for a requirements-type contract to furnish an estimated quantity of 3,565 New Zealand White rabbits to meet the research requirements of the Walter Reed Army Institute of Research (WRAIR) over a 1-year period.

*DLG 01637*

The solicitation's schedule appeared in part as follows:

Item No.	Supplies/Services	Quantity
0001	RABBIT, NEW ZEALAND WHITE:	ESTIMATED
0001AA	Pregnants (certificate of mating date to be furnished).	75
0001AB	Suckling litters (minimum of 5 young per litter w/mother).	40
0001AC	1 - 1 1/2 lbs, sex immaterial	400
0001AD	3 - 4 lbs, sex to be stated on each request	1300
0001AE	5 - 6 lbs, sex to be stated on each request	1500
0001AF	7 - 9 lbs, males	250

*005-345*

[Protests Against REJECTION of Bid and CANCELLATION of IFB]

Section F of the IFB, "Description/Specifications," stated that "All rabbits must come from a closed colony and shall be raised by the Contractor."

Seven bids were opened on October 10. All bidders except Roy bid on all six subitems. Roy bid only on subitem No. 0001AE.

The two lowest bids as determined on the basis of the total extended price for all six subitems were successively rejected after visits to each bidder's facility by Army representatives. The other bids on all items were considered unreasonable in price. Roy's bid on subitem 0001AE was rejected as nonresponsive on the basis of the requirement in the solicitation that all 3,565 rabbits "must come from a closed colony." Roy was so advised in a letter from the contracting officer dated January 22, 1979. The letter also stated that since there were no acceptable bids under the IFB, it was being canceled, and that a new solicitation would not be issued as the requirement had been withdrawn.

The basis of Roy's protest is that the IFB only required that each subitem of rabbits be from a single closed colony, not all 3,565. Thus, Roy suggests that up to six contracts for rabbits from six separate closed colonies could be awarded under the IFB. To support that position, Roy states "the closed colony requirement [of IFB Section F] is simply 'from a closed colony,' \* \* \* [not] 'from the same closed colony.'" Roy also points out that paragraph 10 of the IFB's Solicitation Instructions and Conditions authorized the submission of bids for quantities "less than those specified," and that although subitems 0001AA through 0001AF were listed below item No. 0001 on the schedule, they were not identified as "subitems."

In addition, Roy contends that its bid under item 0001AE is in any case sufficiently low to warrant the purchase of the firm's rabbits.

The determination of any agency's minimum needs and the method of accommodating them is primarily a responsibility of the procuring agency, 46 Comp. Gen. 606 (1967), and such determination will not be questioned by our Office

unless clearly shown to have been unreasonable. Dictaphone Corporation, B-192305, December 22, 1978, 78-2 CPD 431.

In this respect, the Army's report includes the following statement from the Chief of the WRAIR Department of Animal Resources:

"Because of space limitations both in the conditioning facility and in the research housing area, it is not possible to keep animals from different sources entirely separated. When individuals from various sources are mixed or housed in close proximity, there may be cross contamination by micro-organisms from one animal to another. An organism carried by an animal from one source may produce no disease or only mild signs in other animals from that colony due to acquired immunity; however, when the organism is transmitted to highly susceptible animals from a non-infected source the result may be fatal disease. Such disease problems arising during an extended project may cause the loss of many hours of research work and thousands of dollars.

"A second major factor is the introduction of unknown variables into a research project by the changing from one source of animals to another. One of the problems of research is how to eliminate as many of the variables as possible from an experimental procedure to insure that differences seen are due to the experimental manipulation and not to differences in the animal used. Animals from different sources are not identical, and mixing animals from several sources increases variability and complicates data interpretation. Therefore, a single closed source of animals is required.

"The above factors apply not only to animals of one size, e.g. 3-5 lbs, but also to animals of different sizes, e.g. weanling vs 6-7 lbs. For this reason we have requested that for contract purposes, all animals should be from a single closed colony."

On that basis, it is the Army's position that it simply has no use for 1,500 five to six pound rabbits alone, i.e., an award of item 0001AE would not satisfy the agency's actual needs.

Roy has presented no evidence to refute the Army's position as set out above. Since the protester has the burden to affirmatively prove its case, Reliable Maintenance Service, Inc.--request for reconsideration, B-185103, May 24, 1976, 76-1 CPD 337, we must conclude that the Army's needs could only be met by the procurement from a single closed colony for the total estimated quantity. Thus while the Army's needs may have been inartfully stated, there is no requirement that an award be made if it appears that the contract would not result in the Army getting what it wanted. See Ingersoll-Rand Company, B-192279, October 6, 1978, 78-2 CPD 258; 43 Comp. Gen. 23 (1963).

In reaching this conclusion, we recognize that in our recent decision in Roy's Rabbitry, B-193628, May 2, 1979, we sustained a similar protest by Roy under an IFB issued by the National Institutes of Health (NIH), Department of Health, Education, and Welfare. The NIH solicitation sought bids for nearly 10,000 rabbits of specified sex, age, type, and weight, for research purposes. NIH justified its intention to award a contract in the aggregate to the low responsive, responsible bidder on the basis that multiple awards could, among other things, result in research problems by the introduction of diseased rabbits and genetic variables. We found that such concern would not necessarily be obviated by an aggregate award, in large part because under the clear terms of the IFB even a single supplier could supply rabbits from more than one colony, and because NIH indicated that rabbits were also bred in-house for research purposes. Thus, contamination or genetic problems could be encountered notwithstanding whether a single aggregate award was made. In the absence of those factors in the present solicitation, we do not believe that WRAIR's justification of its needs can be similarly rebutted.

The protest is denied.

*R. F. K. 114*

Deputy Comptroller General  
of the United States