

Matter of: Days Inn Marina
File: B-254913
Date: January 18, 1994

Phillip E. Johnson for the protester,
Colonel Riggs L. Wilks, Jr., and Captain Gerald P. Kohns,
Department of the Army, for the agency.
Roger H. Ayer, Esq., and James A. Spangenberg, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Agency had a compelling reason to cancel, after bid opening, an invitation for bids (IFB) for lodging, dining facilities, and transportation of visiting cadets for training, where the IFB's stated geographic restriction failed to ensure satisfaction of the agency's minimum need that there be predictable travel time between the cadets' lodging and the scheduled classes because the stated restriction permitted lodging, such as offered by the protester, on the other side of a tunnel which has a history of traffic delays.

DECISION

Days Inn Marina protests the cancellation of invitation for bids (IFB) No. DABT57-93-B-0025, issued by the Department of the Army for lodging, dining facilities, and transportation for Reserve Officer Training Corps cadets during training at Fort Monroe, Virginia.

We deny the protest.

The IFB, issued on June 18, 1993, contained a geographic restriction requiring the facility to be located within a 5-mile radius of the entrance gate to Fort Monroe in Hampton, Virginia. Four bids were received; Days Inn Marina's was the low responsive bid. On August 4, after pre-award surveys, the Army decided to cancel the solicitation because the stated geographic restriction was insufficient to satisfy its requirements. In this regard,

two of the bidders, including the Days Inn Marina, were located in Norfolk, which was on the other side of the Hampton Roads Bridge Tunnel from Fort Monroe, a route that has a history of traffic delays.¹ The agency further stated:

"[t]he purpose for this requirement is for the students to be housed within a reasonable commuting distance in terms of travel time it takes to transport students to/from the School of Cadet Command . . . Since each training course is only eleven (11) days in duration, any unanticipated loss of training would seriously degrade the quality of the Cadet Training Program at Fort Monroe."

The agency therefore canceled the IFB, with the intent of issuing an IFB permitting only locations on the Hampton side of the tunnel within 5 miles of Fort Monroe.

On August 23, Days Inn Marina protested the IFB's cancellation to the agency, which was denied on September 7. This protest followed. Days Inn Marina contends that the agency lacks a compelling reason to cancel the IFB because Days Inn Marina is less than 5 miles from Fort Monroe, a distance that can be driven at the posted speed limit in under 10 minutes.

A contracting agency must have a compelling reason to cancel an IFB after bid opening. Federal Acquisition Regulation (FAR) § 14.404-1(a)(1) (FAC 90-5); Donco Indus., Inc., B-230159.2, June 2, 1988, 88-1 CPD ¶ 522. Where an IFB does not contain specifications that reflect the agency's actual needs, the agency has a compelling basis for cancellation after bid opening. FAR § 14.404-c(1) (FAC 90-5); Environmental Safety Consultants, Inc., B-241714, Feb. 26, 1991, 91-1 CPD ¶ 213; Shetland Props. of Cook County Ltd. Partnership, B-225790.2, July 1, 1987, 87-2 CPD ¶ 2.

Reasonable travel time-based geographic restrictions can be imposed by a solicitation where necessary to satisfy the agency's minimum needs. Treadway Inn, B-221559, Mar. 10, 1986, 86-1 CPD ¶ 236. The agency has provided documentation that shows that traffic passing through the Hampton Roads Tunnel is prone to an average of 13 traffic delays a day "for reasons ranging from accidents to cars running out of

¹The tunnel runs under Hampton Roads and connects Hampton and Norfolk via Interstate Highway 64.

gas."² In the agency's view, the late or non-arrival of cadets to scheduled classes because they were stuck in the tunnel "will seriously and adversely impact the cadets' training," which must be performed within a tightly scheduled 11-day period. Thus, the agency views predictable travel time between the cadets' lodgings and their scheduled classes as a minimum agency requirement, which cannot be satisfied if the lodging is on the other side of the tunnel.

Days Inn Marina claims that the Virginia Department of Transportation advises that since the opening of the new Monitor-Merrimac Tunnel, traffic flow in the Hampton Roads Bay Bridge Tunnel "has been greatly reduced." However, as noted by the agency, unlike lodging locations on the Hampton side of the tunnel, there are no time efficient alternate routes between the Days Inn Marina and Fort Monroe. Moreover, the record also demonstrates that while the Monitor-Merrimac Tunnel may have reduced congestion in the Hampton Roads Tunnel, delays are still a common occurrence.

In our view, the agency reasonably determined that an award to Days Inn Marina under the initial IFB would not result in meeting the agency's minimum requirements of predictable, travel time to allow for the tightly scheduled training.³ While the significance of the tunnel in the context of the stated IFB requirements did not occur to the agency until the agency conducted the pre-award surveys, when, as a

²The record shows that the Virginia Department of Transportation can often remove disabled vehicles in 5 to 15 minutes, but

"the average length of delay for accidents will vary depending on the nature of the accident, depending on if there are injuries involved, and the response time of the Virginia State Police and Rescue Units involved. Some of our accidents have caused lengthy delays up to [2] hours before removal."

³We note that there is no showing that adequate competition is not available within the restricted area.

result of a post-bid opening pre-award survey, an agency finds a compelling reason to cancel an IFB, it may do so. See Rogers Mach. and Eng'g, B-245869.2, Mar. 12, 1992, 92-1 CPD ¶ 279.

The protest is denied.

Robert P. Murphy
Acting General Counsel