



Comptroller General
of the United States

800261

Washington, D.C. 20548

Decision

Matter of: Ferguson-Williams, Inc.

File: B-258460; B-258461

Date: January 24, 1995

Lynda Troutman O'Sullivan, Esq., Anne B. Perry, Esq., and Douglas E. Perry, Esq., Fried, Frank, Harris, Shriver & Jacobson, for the protester.

Maj. William R. Medsger and Capt. Brian G. Flannagan, Department of the Army, for the agency.
Charles W. Morrow, 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 invitation for bids after bid opening where the solicitation did not identify the agency's actual requirements and the three low bidders were misled.

DECISION

Ferguson-Williams, Inc. protests the cancellation after bid opening of invitation for bids (IFB) No. DAAH03-94-B-0008 and the issuance of IFB No. DAAH03-94-B-0037 by the Department of the Army, for base refuse collection and disposal services at Redstone Arsenal, Alabama, for a base year with four option years under a fixed-price, indefinite quantity contract.

We deny the protest.

Section B of the IFB listed the Army's various refuse collection and disposal requirements as separate contract line items (CLIN) with spaces for bidders to insert unit prices and extended total prices. The three CLINs that underlie this protest involve refuse to be collected by containerized systems and read as follows:

0001AC	REFUSE COLLECTION FROM CONTAINERIZED SYSTEM (DUMPSTER) 1 TIME PER WEEK. INCLUDES SALVABLE MATERIAL, RUBBISH, AND DEBRIS 1 TIME PER WEEK. SERVICE TYPE C. SEE IAW [in accordance with] SOW [statement of work], APPENDIX I.
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EST INDEF QTY [estimated indefinite quantity]
 PER MONTH: 2,700 CY [cubic yards]
 EST INDEF QTY PER YEAR: 32,400 CY

0001AD REFUSE COLLECTION FROM CONTAINERIZED SYSTEM
 (DUMPSTER) 3 TIMES PER WEEK. INCLUDES
 SALVABLE MATERIAL, RUBBISH, AND DEBRIS 1 TIME
 PER WEEK. SERVICE TYPE D. SEE IAW SOW,
 APPENDIX I.
 EST INDEF QTY PER MONTH: 700 CY
 EST INDEF QTY PER YEAR: 8,400 CY

0001AE REFUSE COLLECTION FROM CONTAINERIZED SYSTEM
 (DUMPSTER) 6 TIMES PER WEEK. INCLUDES
 SALVABLE MATERIAL, RUBBISH AND DEBRIS 1 TIME
 PER WEEK. SERVICE TYPE E. SEE IAW SOW,
 APPENDIX I.
 EST INDEF QTY PER MONTH: 300 CY
 EST INDEF QTY PER YEAR: 3,600 CY

The IFB indicated that the cubic yards were volume of container space in contractor-provided containers, and provided that the maximum limit of the contractor's obligation was 150 percent of the stated estimated quantity per year for each CLIN, while the minimum obligation was 50 percent of the estimated quantity.

On June 16, the Army issued amendment No. 0004, which among other things, was to clarify Section B. Specifically, the amendment stated:

"4. The Monthly Estimated Quantities in SECTION B are either the actual quantities/capacities listed in Appendix I or have been increased to anticipate future increases in these items.

Example:

Service Type	Section B	Appendix I	
A	1171	1171	Actual
F	180	150	Increased

The Yearly Estimated Quantities in SECTION B are the Monthly Quantities multiplied by twelve (12) months."

"5. Quantities collected for periods of time are not represented by any specific numbers in this solicitation, however, they are implied based on the capacity and service types.

Example:

Building	Service	Capacity	Frequency	Weekly Collection
7571	C	16	1	16
7574	D	16	3	48 ⁿ

The Army received five bids at the July 11 bid opening, of which Ferguson-Williams's bid was fourth lowest.

After examining the bids, the Army concluded that the three lowest bidders apparently misunderstood the estimated quantities set forth in the Section B CLINs set out above, in that each bid reflected the same unit prices regardless of the different frequencies among the CLINs for collecting refuse, while the Army intended that bidders would multiply the stated total estimated cubic yards in the CLINs by the number of collections per week and factor this data into their unit prices.¹ In addition, the estimated quantities stated in Section B were found to be incorrect in any case; according to the Army, the actual estimated yearly quantities were 140,292 CY per year for CLIN 0001AC; 109,116 CY per year for CLIN 0001AD; and 93,528 CY per year for CLIN 0001AE.² Finally, the Army determined that the CLINs failed to reflect the separate requirement for disposal of salvable material, rubbish, and debris, as a separate service.³ Under the circumstances, the contracting officer

¹Ferguson-Williams raised this issue in an agency-level protest, arguing that the lower bids allegedly were nonresponsive because they were mathematically and materially unbalanced.

²CLIN 0001AC requires the contractor to provide 2,700 CY of dumpster space to be serviced one time per week. Thus, the correct monthly estimated quantity for this CLIN is 2,700 times 4.33 equals 11,691 CY and the yearly total (11,691 times 12) is 140,292 CY. For CLIN 0001AD, the correct monthly total is 9,093 CY (700 times 3 times 4.33) and the correct yearly total is 109,116 CY (9,093 times 12). For CLIN 0001AE, the correct monthly total is 7,794 CY (300 times 6 times 4.33) and the correct yearly total is 93,528 CY (7,794 times 12).

³The Army reports that salvable material, debris, and rubbish should have been specified separately from refuse collection because it required a different vehicle to collect and haul. The language in the CLIN suggested that the service was to be included in the regular pickups, as opposed to a separate pickup requiring a different vehicle.

determined that there was a compelling reason to cancel the IFB.

Ferguson-Williams claims that the Army lacked a compelling reason to cancel because the IFB allegedly did not contain ambiguous or defective specifications, given amendment No. 0004's clarifications, and that the cancellation prejudiced the two high bidders, including Ferguson-Williams, which understood and properly priced the CLINs. Ferguson-Williams maintains that it is entitled to the award as the low responsive bidder because the three lower bids were materially unbalanced and thus nonresponsive to the IFB.

Because of the potential adverse impact on the competitive bidding system of cancellation after bid prices have been exposed, a contracting officer must have a compelling reason to cancel an IFB after bid opening. Federal Acquisition Regulation (FAR) § 14.404-1(a)(1). The regulations authorizing cancellation after bid opening specify that inadequate or ambiguous specifications may constitute a compelling reason to cancel an IFB. See FAR § 14.404-1(c)(1). The contracting officer has the discretion to determine whether the necessary circumstances exist for canceling a solicitation and we only review the decision to ensure that it was reasonable. Phil Howry Co., B-245892, Feb. 3, 1992, 92-1 CPD ¶ 137.

Here, cancellation of the IFB was reasonable because the actual estimated quantities for the CLINs were grossly understated⁴ and the IFB failed to specify the separate pickup requirement for salvable material, rubbish, and debris. Where the estimates contained in the IFB are defective in a manner which has the consequence that the

⁴While Ferguson-Williams complains that the Army did not initially cancel the IFB because it lacked a separate pickup requirement for salvable material or because the CLIN estimates were erroneous, information justifying the cancellation of a solicitation can be considered no matter when the information first surfaces or should have been known. Holk Dev., Inc., B-236765.2, Jan. 18, 1990, 90-1 CPD ¶ 65.

⁵For CLIN 0001AC, the CLIN stated the yearly estimated quantity as 32,400 CY, while the actual estimated quantity is 140,292 CY; for CLIN 0001AD, the CLIN stated the yearly estimated quantity as 8,400 CY, while the actual estimated quantity is 109,116 CY; and for CLIN 0001AE, the CLIN stated the yearly estimated quantity as 3,600 CY, while the actual estimated quantity is 93,528 CY.

agency is unable to ascertain whether award will result in the lowest cost to the government, there is a compelling reason to cancel an IFB and resolicit using accurate estimates. See Heritage Reporting Corp., B-248860,2, Oct. 23, 1992, 92-2 CPD ¶ 276. Moreover, as noted by the Army, the contractor's minimum and maximum obligations under the CLINs are expressed as 50 percent and 150 percent of the CLIN estimates, respectively, so that the canceled IFB would not have allowed the government's requirements to be satisfied.

Ferguson-Williams does not deny that the CLIN estimates in question were inaccurate and did not adequately provide for the requirement for a separate pickup of salvable material, rubbish, and debris. Instead, Ferguson-Williams asserts that amendment No. 0004 reasonably made everything clear to the bidders, noting that neither of the two high bidders were apparently misled. However, amendment No. 4 did not clearly place the responsibility to compute the real estimated quantities for each CLIN upon the bidders as intended. Moreover, response No. 4 under this amendment (quoted above) seemingly confirmed the accuracy of the estimated quantities set forth in the CLINs. Furthermore, the agency reports that Ferguson-Williams and the high bidder were the incumbent and prior incumbent, which essentially substantiates the agency's conclusion that the other bidders were misled by the defective RFP and did not compete on an equal basis. See Phil Howry Co., *supra*.

In sum, the agency reasonably determined that it had a compelling reason to cancel the IFB and resolicit, stating its actual requirements. The protest is denied.

\s\ Paul Lieberman
for Robert P. Murphy
General Counsel