

Protests of	)	Date: May 8, 1987
	)	
JOHN S. VAYANOS	)	
CONTRACTING CO., INC.	)	
	)	
Solicitations 239986-87-A-0005,	)	P.S. Protest No. 87-19
239986-87-A-0021	)	

DECISION

John S. Vayanos Contracting Company, Inc. (Vayanos) protests the contracting officer's cancellation of Invitation For Bid (IFB) 239986-87-A-0005 for the construction of a post office at Fishing Creek, MD, the resolicitation of the requirement under IFB No. 239986-87-A-0021, and the cancellation of that solicitation.

IFB No. 239986-87-A-0005 (the original IFB) was issued October 22, 1986, by the Facilities Service Office, Eastern Region. When bids were opened November 24, Vayanos' bid of \$210,000 was the only bid received. After bid opening the contracting officer determined that the specifications in the IFB did not adequately describe the requirements of the Postal Service and, on January 15, 1987, canceled the solicitation. IFB No. 239986-87-0021 (the resolicitation) was issued February 12, 1987, with a revised specification, and bids were due March 12, 1987. On March 9 the contracting officer received Vayanos' telegram protesting the issuance of the resolicitation. Because of an additional change in postal requirements, the contracting officer canceled the resolicitation on March 10, 1987. On March 12 Vayanos filed a protest to the cancellation of the resolicitation.

Vayanos alleges that the post-bid-opening cancellation of the original IFB and the issuance of a resolicitation were unnecessary and that the changes made to the technical specifications were not substantive changes that warranted cancellation of the original IFB. Vayanos contends that as a result of the cancellation of the original IFB, it was disadvantaged by the disclosure of its bid. Vayanos also argues that its protests regarding the cancellation of the original IFB and the issuance of the resolicitation should have been resolved prior to cancellation of the resolicitation.

In his report to this office, the contracting officer states that he determined it to be in the best interest of the Postal Service to cancel the original IFB since changes in the technical specifications, specifically the plumbing system, were required in order to

conform to the local building code.

The specification as issued in the original solicitation was reproduced in the resolicitation, with the exception of various modifications to Section 15400, Plumbing Systems. Where section 2.01 had specified a underground soil, waste, and vent systems of "Sch. 40 PVC, with appropriate P.V.C. fittings," and section 2.03 had specified underground soil pipe of vitrified clay, section 2.01 of the revision specified "[s]ervice weight cast iron soil pipe tar coated," with instructions for installation and joints.

Where section 2.02 of the original specification called for above-grade soil and waste pipe to be of cast iron and galvanized steel, section 2.02 of the revision called for PVC pipe and fittings.

With respect to the second cancellation, the contracting officer's report states that the plans for the Fishing Creek post office "are being redesigned because of cost factors requiring excessive site work."

In a submission in response to the contracting officer's report, counsel for Vayanos contends that the changes made to the specification do not justify the cancellation because they are "very technical changes" which do not affect the cost of the work, and which in any event "are superseded ... by the requirements set forth in the drawings...."

Moreover, counsel contends that the contractor would have to comply with the local building code pursuant to the terms of the contract.

There is an initial question of timeliness with respect to the first Vayanos protest. Although by its terms it is against the issuance of the second solicitation, in substance it is a protest against the January 15 cancellation of the original solicitation. On the record before us, it is untimely in both respects, having been received by the contracting officer well after the "10 working days after the information on which [it is] based is known or should have been known." Postal Contracting Manual (PCM) 2-407.8.(d)(3). The basis for the protest became known or

knowable at least as early as February 12, when the revised solicitation was issued. The protest, received sixteen working days after the replacement IFB was issued, is untimely.

Although we need not reach the merits of this aspect of the protest, we note that because of concern about the integrity of the formal advertising process, our regulations require that a compelling reason exist for a contracting officer to cancel a solicitation after bids have been opened. PCM 2-404.1.(a); See Commercial Fleet Services, Inc., P.S. Protest No. 86-63, October 3, 1986. Two of the grounds for cancellation under that standard are the contracting officer's determinations that "[i]nadequate or ambiguous specifications were cited in the solicitation" (PCM 2-404.1 (b) (i)) or that "[s]pecifications have been revised" (PCM 2-404.1 (b)(ii)).

Vayanos alleges that the changes made to the technical specifications were not substantive changes and did not warrant canceling the original IFB. However, it has provided no reasoned analysis of the changes to support its conclusion. As the Comptroller General has noted: "[I]t is primarily the contracting agency's responsibility to determine its minimum needs.... An agency is not precluded from correcting or clarifying a solicitation when its minimum needs have not been met. It is the protester who bears the burden of showing that the determination is unreasonable." American Marine Decking Systems, Inc., Comp. Gen. Dec. B-216580, March 1, 1985, 85-1 CPD & 256. The protester is also incorrect in contending alternatively that the drawings or the building code will control the specifications. General provision 60 (a) provides that the specifications govern over the drawings, and general provision 52 (a) provides that the contractor shall comply with local building code requirements only "unless otherwise specifically provided." Accordingly, to the extent that the plumbing specification set out requirements for soil pipe, it would control over the drawings and building code.

Finally, Vayanos argues that the pre-bid-opening cancellation of the resolicitation should not have occurred until Vayanos' protest regarding its issuance had been resolved. In cases involving pre-bid-opening cancellations of an IFB, the "compelling reason" standard used in post-bid-opening cancellations is not applicable. Instead, PCM 2-208 states that an IFB should only be canceled if cancellation is clearly in the interest of the Postal Service, such as where amendments to the IFB would be of such magnitude that a new IFB is desirable. The protester has not established a basis for overriding the contracting officer's decision to cancel the resolicitation.

The protest is dismissed in part and denied in part.<sup>1/</sup>

William J. Jones  
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**[Compared to original 2/23/93 WJJ]**

<sup>1/</sup> During the pendency of the protest, we were advised that Vayanos had been suspended from contracting with the Postal Service by the Assistant Postmaster General, Facilities Department, April 8. A suspended bidder is not eligible for the award of government contracts during the term of its suspension and thus is not an "interested party" entitled to file a protest under the Postal Service's bid protest regulations. Doninger Metal Products Corp, P.S. Protest No. 83-6, June 17, 1983; accord Potomac Contractors, Comp. Gen. Dec. B-223173, June 3, 1986, 86-1 CPD & 520; Hero, Inc., Comp. Gen. Dec. B-221820, May 12, 1986, 86-1 CPD & 450; see PCM 2-407.8 c; 4 CFR 21.0 (a) and 21.1 (a) 1986. Thus, Vayanos' suspension affords an independent ground for the dismissal of the protest.