**Comptroller General**
**of the United States**

**Washington, D.C. 20548**

# Decision

**Matter of:** Neals Janitorial Service

**File:** B-276625

**Date:** July 3, 1997

Christopher M. Wawack, Esq., and Joseph A. Camardo, Jr. Esq., for the protester.
Bernard J. Roan, Esq., and Thomas W. Berndt, Esq., National Aeronautics and Space Administration, for the agency.
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## DIGEST

Agency has compelling reason to cancel solicitation after bid opening where the information in the solicitation and ascertainable from the site visit was inadequate for bidders to establish the actual work load requirements, which resulted in the bidders competing on an unequal basis.

## DECISION

Neals Janitorial Service protests the cancellation of invitation for bids (IFB) No. IFB2-36271(JMS), issued by the National Aeronautics and Space Administration (NASA), Ames Research Center, for janitorial, refuse collection, grounds maintenance, and pest control services at Moffett Field, California.

We deny the protest.

The IFB, issued on October 18, 1996, contemplated the award of a firm, fixed-price contract for 1 year with 4 option years. The contract required both lump-sum, fixed-priced work for recurring services, such as regularly scheduled janitorial services, refuse collection, grounds maintenance, pest control services, and indefinite quantity work, such as those janitorial services or grounds maintenance services which are to be ordered as needed (e.g., stripping and rewaxing floors and tree pruning).[1]

The IFB requested a single price for all of the fixed-priced recurring work for the base year and each option year. Section E of the IFB provided a Schedule of Deductions on which bidders were to provide line item prices for each category of

[1]Janitorial services was the largest service area under either fixed-priced or indefinite quantity work. The government estimate showed it accounted for more than half of the fixed-priced work.

fixed-priced work specified in the statement of work at section C of the IFB. The amended IFB stated that a bidder's prices on the Schedule of Deductions will constitute the itemized unit and extended prices for the fixed-price work in the bid schedule, and that the price bid for the fixed-priced work must equal the total of all the line item prices in the Schedule of Deductions. The amended IFB also stated that the itemized prices in the Schedule of Deductions would be used to evaluate the reasonableness of the bid price for fixed-price work, and that:

> "[u]nbalanced, unrealistic prices in the [fixed-priced] work in [the bid schedule], as itemized in the Schedule of Deductions in Section E, or in the [indefinite quantity] work, will be a basis for disqualification of a bidder."

With regard to the recurring janitorial services portion of the fixed-priced work, the line items of the Schedule of Deductions generally requested monthly unit prices for each category of janitorial services based on category and frequency of services to be performed.[2] The specific work requirements to be performed under each Schedule of Deductions line item were stated in the separate janitorial services checklists attached to the IFB at section J-C8.3. These tasks included such things as emptying trash in breakrooms; vacuuming or sweeping entrance mats; sweeping, vacuuming or mopping offices, labs, computer rooms, and carpeted surfaces; refilling all restroom dispensers; cleaning all restroom fixtures; and servicing floor drains.

The IFB also provided information such as floor plans for each building to be serviced, the total area of each type of floor covering, and estimates of employee, contractor and visitor populations; however, the IFB did not provide estimates of the work load or other data describing the quantity of work to be performed under these requirements.

NASA conducted a pre-bid conference/site visit on November 13. Prospective bidders attending the site visit were permitted to view only 4 out of a total of 171 buildings to be serviced under the contract. Amendment 2 was issued following the pre-bid conference/site visit. The amendment included a record of questions asked by prospective bidders and the corresponding agency answers. A number of questions were asked about the work load for specific work requirements under janitorial services. The agency did not provide specific answers for these questions,

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[2]For example, "General Janitorial Daily Services" and "Standard Janitorial Daily Services: Restroom + Sh[owers]" were 2 of the 10 categories for janitorial services for which monthly prices were requested.

but generally referred bidders to the solicitation. For example, one question and answer was:

> "36. How may breakrooms? . . .
>
> Based on the information provided, taking into account for such things as population, typical use of a facility, and standard planning and statistical guidelines, the Contractor will use its best judgment to determine the number of breakrooms."

Seven bids were received by bid opening on January 7, 1997. Bids ranged from the low bid of $11,314,202 to the high bid of $29,135,350. Neals submitted the second low bid of $11,748,108.[3]

The contracting officer reviewed the bids, which included analyzing the line item prices of each bid and the government estimate, and requested and obtained a bid verification from the low bidder. This price analysis revealed an extremely wide price disparity among the various line item prices and the government estimate for those line items, particularly with regard to janitorial services. Every bid contained some line item prices which were significantly above the line item prices both in the government estimate and in the other bids, as well as line item prices which were significantly below those in the government estimate and in other bids.[4] Based on this analysis, the contracting officer suspected that the bidders had not prepared their bids on the same basis.

Upon review of the solicitation, the contracting officer determined that the IFB did not provide sufficient information for bidders to determine work load requirements for the fixed-price under janitorial services work. Information related to the pricing of these services which could not be determined from the IFB included: the number and total area of breakrooms, the number of waste baskets, the number and sizes of entrance mats, the number of restroom dispensers and fixtures, and the

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[3]The agency alleges that Neals, as the second low bidder, is not an interested party eligible to maintain this protest of the cancellation pursuant to 4 C.F.R. § 21.0(a), 21.1(a) (1997). The record evidences that the low bid expired and that Neals extended its bid acceptance period. Under the circumstances, we consider Neals to be an interested party. See International Alliance of Sports Officials, B-211549, Jan. 24, 1984, 84-1 CPD ¶ 110 at 3.

[4]For example, in approximate terms, Neals's bid was well more than double the government estimate for some items, and less than half of that estimate on others. The magnitude of difference between Neals's bid and those of other bidders for various line items was often even greater.

number of floor drains. Moreover, the floor plans only partially showed labs, computer rooms, and restrooms, and the agency states that the actual number of these rooms is significantly greater than is shown on the drawings.[5]

The contracting officer therefore determined that the IFB contained inadequate or ambiguous specifications which prevented bidders from preparing their bids on a common basis, and that a compelling reason to cancel the IFB existed under Federal Acquisition Regulation (FAR) § 14.404-1(c)(1). The agency canceled the IFB and this protest followed.

Neals alleges that a compelling reason to cancel the IFB does not exist because the information that was included in the IFB, such as floor plans, areas of floor surfaces, and population, as well as information observed from the site visit, was sufficient for bidders to estimate the work load requirements on their own and submit bids on a common basis.

An IFB may be canceled after bid opening when there is a compelling reason to do so. FAR § 14.404-1(a). Inadequate or ambiguous specifications included in an IFB may constitute such a compelling reason. FAR § 14.404-1(c)(1). Contracting officials have broad discretion to determine whether or not appropriate circumstances for cancellation exist, and our review is limited to considering the reasonableness of the exercise of that discretion. Source AV, Inc., B-238017, Mar. 27, 1990, 90-1 CPD ¶ 336 at 3. Although a solicitation defect is not in itself a compelling reason to cancel an IFB, Energy Maintenance Corp.; Turbine Engine Servs. Corp., 64 Comp. Gen. 425, 427 (1985), 85-1 CPD ¶ 341 at 3, we generally regard cancellation after bid opening to be appropriate when an award under the IFB would not satisfy the actual minimum needs of the government or when other bidders would be prejudiced by such an award. Source AV, Inc., supra at 3.

Here, the contracting officer determined that a compelling reason to cancel the IFB after bid opening existed because specifications for janitorial services were so inadequate that bidders did not have a common basis on which to prepare bids. It is undisputed that the IFB did not provide estimates of a large portion of the work load, including the number of breakrooms, waste baskets, restroom dispensers and fixtures, floor drains, and the number and size of entrance mats, and it is apparent that in order for a bidder to determine its cost for cleaning or servicing these items, it must estimate, at least roughly, the quantity of these items. Although the floor plans provide some relevant information, such as the layout of each building and

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[5]After additional reviews, the contracting officer also determined that the IFB may be defective for other reasons, which the protester also contested. Since we find reasonable the contracting officer's determination that a compelling reason existed to cancel the IFB based on the inadequate janitorial services specifications, review of these other issues would be academic.

the types of floor surfaces, they do not show such things as breakrooms, restroom fixtures, entrance mats, or other items. Also, the site visit (attended by 6 of the 7 bidders) was limited to just 4 out of 171 buildings. Considering the large quantity and variety of buildings, this limited site visit did not provide a useful basis for estimating the contents of the overwhelming majority of the buildings to be serviced. The substantial variance in line item prices for janitorial services between the bids and the government estimate (which the protester does not challenge), as well as among the bids, supports the agency's conclusion that each bidder used estimates significantly different from those used by the government or other bidders.[6] Thus, the record evidences that the lack of specificity or clarity in this IFB's work load requirements resulted in bidders competing on an unequal basis, such that any award based on this IFB may be prejudicial to the remaining bidders and the government; this provides the agency with a compelling reason to cancel the IFB. See Source AV, Inc., supra at 3-4; Integrity Management Int'l, Inc., B-222405.4, Feb. 26, 1987, 87-1 CPD ¶ 220 at 3.

The protester alleges that the information in the IFB does not need to provide work load estimates for the items to be serviced under the janitorial services requirement because janitorial service contractors should have sufficient expertise to make reasonable assumptions about the work load in order to estimate the actual work load requirements. However, the protester has neither explained the assumptions upon which it relied in preparing its bid nor shown that materially different reasonable assumptions could not have been made by other bidders. The protester's mere assertion that it knew enough about the agency's work load requirements to prepare its bid does not establish either that its bid accurately reflects the actual needs of the agency or that an award under this IFB would be fair to other bidders. See Turbine Engine Servs. Corp., B-215281.2, Aug. 21, 1984, 84-2 CPD ¶ 206 at 2.

Additionally, since some floor plan drawings in the IFB which identified labs, computer rooms and restrooms significantly understated the number of these rooms, the solicitation did not reflect the agency's actual minimum needs, and

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[6]The pattern of understated and overstated prices could also be evidence of unbalanced bidding. See DGS Contract Servs., Inc.; Inventory Accounting Servs., Inc., B-258429; B-258429.2, Jan. 19, 1995, 95-1 CPD ¶ 27 at 3. This would be difficult to determine without knowing the work load estimates used by the bidders, although it seems extremely unlikely that all seven bidders adopted price unbalancing strategies in light of the IFB statement that unbalanced prices would be basis for bidder disqualification. In the unlikely event that all the bids were unbalanced, which was not an issue addressed by either party, it appears that the structure of the solicitation may have inadvertently encouraged unbalanced bidding, in which case the agency should have canceled the solicitation. See T.L. James & Co., Inc., B-219443, Oct. 21, 1985, 85-2 CPD ¶ 430 at 6.

award under this IFB therefore would not serve the actual minimum needs of the agency. This provides further support for the cancellation. See Ferguson-Williams, Inc., B-258460; B-258461, Jan. 24, 1995, 95-1 CPD ¶ 39 at 4-5; Turbine Engine Servs. Corp., supra at 2.

The protest is denied.

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of the United States