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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Goodway Graphics of Virginia, Inc.; NPC, Inc.; P.A. Hutchison Co.

File: B-297789

Date: March 21, 2006

Anthony W. Hawks, Esq., for the protesters.
LaTonya D. Hayes, Esq., Government Printing Office, for the agency.
Kenneth Kilgour, Esq., and Christine Melody, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Where Government Printing Office (GPO) failed to comply with its policies regarding compilation of a bidders list and publication of an invitation for bids (IFB), GPO reasonably determined that it had a compelling reason to cancel the IFB after bid opening and resolicit its requirements.

DECISION

Goodway Graphics of Virginia, Inc., NPC, Inc., and P.A. Hutchison Co. protest the Government Printing Office's (GPO) decision to cancel an invitation for bids (IFB) issued pursuant to GPO's Program 421-M for production of Army books and pamphlets. The protesters assert that the agency lacked a compelling reason to cancel the IFB after bid opening.

We deny the protest.

The IFB was sent to 22 firms on October 27, 2005, and 16 contractors responded. Bid opening was held on November 17. The discovery that one of several incumbents had been unintentionally excluded from the agency's bidders list prompted the agency to investigate the procurement. That investigation uncovered two significant deviations from the procurement policies contained in GPO's Printing Procurement Regulation (PPR). The agency did not post the IFB on either the GPO or Federal Business Opportunities (FedBizOpps) Internet websites,¹ see PPR, Chap. VIII, § 5.4,

¹ The PPR states that GPO's policy is to publish solicitations in the Commerce Business Daily, which has been replaced by the FedBizOpps website. VSE Corp.; Johnson Controls World Servs., B-290452.3 et al., May 23, 2005, 2005 CPD ¶ 103 at 5.

and the agency excluded two incumbent contractors from the agency distribution list. See PPR, Chap. X, § 1.1(b)(4). On December 6, the contracting officer sought the concurrence of the GPO Contract Review Board in her decision to cancel and readvertise the solicitation, as required by PPR, Chap. I, § 10.4(a)(2). The Board unanimously concurred with the contracting officer's decision.

On December 9, the agency reissued the IFB to 21 contractors with a December 19 bid opening date. Twenty-two contractors submitted bids, six more than responded to the first solicitation. This protest followed.

The PPR requires that there be a compelling reason to cancel an IFB after bid opening. PPR, Chap. XII, § 2(a); News Printing, Inc., B-274773.2, Feb. 11, 1997, 97-1 CPD ¶ 68 at 2.² Determining whether a compelling reason exists involves the exercise of the contracting agency's judgment; we review such a determination only to ensure that it is reasonable. News Printing, Inc., *supra*.

The PPR states that an IFB may be cancelled after bid opening where cancellation is "clearly in the best interest of the government." PPR, Chap., XII, § 2.1(b). Here, the contracting officer had two principal reasons for concluding that the cancellation was in the government's best interest: the agency failed to publish the solicitation on FedBizOpps;³ and the agency failed to solicit two incumbents.⁴ As explained below, we think the contracting officer's decision to cancel the solicitation and, in the

² Although GPO, as a legislative branch agency, is not subject to the Federal Acquisition Regulation (FAR), C-Cubed Corp., B-289867, Apr. 26, 2002, 2002 CPD ¶ 72 at 3, both GPO's PPR and the corresponding FAR provision, § 14.404-1, require a compelling reason to cancel an IFB after bid opening.

³ While the protesters do not concede that the agency failed to publish the IFB on FedBizOpps, the record contains a declaration by a GPO senior publishing specialist stating that she has knowledge that the publication did not take place, and the record contains no evidence from the protesters that the IFB was published.

⁴ GPO procedures allow any party to purchase in bulk copies of all GPO solicitations; distribution firms that subscribe to this service then make the solicitations available to their own subscribers. As another factor bearing on the decision to cancel, the agency noted that the subscription bid service which normally would have distributed the IFB to interested potential bidders, including one of the incumbent contractors omitted from the bidders list, maintained that it did not receive the IFB until one day prior to the bid opening—too late to send it to prospective bidders. The record is not clear on these facts; the knowledgeable GPO official states that the bid service in fact received the IFB on the date it was issued. We need not resolve this issue, however, given our conclusion that the cancellation was justified on the other grounds discussed below.

resolicitation, to adhere more closely to the policy guidance in the PPR, was reasonable.

The PPR provides that contracting officers “shall promote and provide for competition to the maximum extent practicable.” PPR, Chap. VIII, § 3.4(a). Under the PPR, the term “maximum extent practicable” is defined to mean that “all responsible sources are permitted to complete.” Id. § 3.3.⁵ In this case, it clearly was reasonable for the contracting officer to conclude that the failure to publish the IFB on FedBizOpps may have impeded all responsible sources from competing. Compounding that failure, two incumbent contractors were not sent the IFB, also contrary to the policy in the PPR to include previously successful bidders on the bidders list. PPR, Chap. X, § 1.1(b)(2). Under these circumstances, it was reasonable for the contracting officer to conclude that cancellation would serve the public’s interest in maximizing competition. Kertzman Contracting, Inc.; Centigrade, Inc.—Entitlement to Costs, *supra*.

In support of their position that the cancellation lacked a compelling basis, the protesters argue first that the grounds cited by the contracting officer reflect GPO policy, not regulations, and that the agency actions not taken were optional, not required. We recognize that some provisions of the PPR describe the procedures to be used in mandatory language, while other provisions are expressed in terms of a policy to be followed.⁶ These differences in terminology in the PPR are not dispositive of the propriety of the decision to cancel, however; rather, it is clear that, as discussed above, the PPR directs contracting officers to promote and provide for maximum competition that offers the opportunity for all responsible sources to compete. As discussed above, the record shows that the cancellation here was consistent with that responsibility.

⁵ This is the same definition as for “full and open competition” under the Competition in Contracting Act of 1984. 41 U.S.C. § 403(6) (2000); Kertzman Contracting, Inc.; Centigrade, Inc.—Entitlement to Costs, B-259461 *et al.*, May 3, 1995, 95-1 CPD ¶ 226 at 3.

⁶ For example, the PPR states that the agency’s “policy” is to include previously successful bidders on the bidders list, PPR, Chap. X, 1.1(b), but that the bidders list “shall” be compiled by including the previously successful vendor. PPR, Chap. X, § 1.1(e). Similarly, the PPR states that the agency “should” publish certain solicitations on-line, PPR, Chap. VIII, § 5.4, but, that to allow contractors who are not on the current bidders mailing list time to request and receive solicitations, proposed procurements “shall” be publicized on-line 15 days before the issuance of solicitations. PPR, Chap. VIII, § 5.5.

The protesters also argue that one of the incumbent contractors not solicited originally failed to take advantage of the opportunity to obtain a copy of the solicitation through a bid subscription service, and that its failure to do so, rather than the agency's failure to solicit the firm, was the principal reason that the incumbent did not receive a copy of the IFB. This argument does not support the conclusion that the cancellation was improper. The central issue here is whether the agency's failure to publicize the solicitation and to include two incumbents on the bidders list justifies cancellation of the solicitation in furtherance of the government's interest in maximizing competition. As explained above, we conclude that it does. We therefore see no basis to question the contracting officer's decision to cancel the IFB.

The protest is denied.

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General Counsel