

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
CONTRACT APPEALS BOARD

Protest of:

ENTERPRISE FLEET SERVICES	)
	) CAB No. P-0703
Under Solicitation No. POKT-2004-B-0080-CM	)

For the Protester: Doug Blanchard, Account Executive, Enterprise Fleet Services. For District of Columbia: Howard Schwartz, Esq., Senior Assistant Attorney General and Talia Sassoon Cohen, Assistant Attorney General..

Opinion by Administrative Judge Matthew S. Watson, with Chief Administrative Judge Jonathan D. Zischkau and Administrative Judge Warren J. Nash, concurring.

**OPINION AND ORDER**

*LexisNexis Filing ID 5733222*

On October 19, 2004, the Office of Contracting and Procurement (“OCP”) solicited bids for a “requirements contract” (IFB No. POKT-B-2004-B-0080-CM (“Solicitation”)) on behalf of the Department of Public Works (“DPW”) for lease of sedans, vans and pickup trucks divided into line items for 10 types of gasoline and 10 types of alternative fuel vehicles. (Agency Report (“AR”) Ex. 1). The Solicitation estimated the District’s requirements for each of the 20 categories of vehicles totaling 188 vehicles. Bids from four companies, including Enterprise Fleet Services (“Enterprise”), stating separate prices for each of the 20 separate vehicle types for the base and each of the two option years were opened and made public on November 19, 2004. On March 9, 2005, Enterprise protested an expected cancellation of the solicitation. Enterprise asserted in its protest that cancellation of the solicitation was not warranted.

On March 28, 2005, 18 days after the protest was filed, the CPO did, in fact, determine to reject all bids and cancel the solicitation citing a reduction in estimated need from 42 to 19 gasoline fueled vehicles and from 146 to 92 alternative fuel vehicles as the reason for the action. (AR Ex. 3). The contracting officer found that the District no longer had need for any vehicles in 14 of the 20 line items. The estimated quantities for 4 of the remaining 6 vehicle types remained constant and increased for two vehicle types.

But for an inherently ambiguous term of the invitation which independently dictates cancellation of the solicitation, we would have agreed with Enterprise that the District should not have cancelled the entire solicitation.

## DISCUSSION

### Cancellation

The Board's jurisdiction over this protest is founded on D.C. Code § 2-309.03(a)(1). D.C. Code § 2-303.07 provides that "An invitation for bids, a request for proposals, or other solicitations may be cancelled, or all bids or proposals may be rejected, only if it is determined in writing by the [Chief Procurement Officer] that the action is taken in the best interest of the District government." Our standard of review of a cancellation determination is well settled. An invitation for bids may be cancelled only if the CPO determines in writing that the action is taken in the best interest of the District government and there is a reasonable basis for cancellation. D.C. Code § 2-303.07 (2001); *American Consultants and Management Enterprises, Inc.* CAB No. P-0683, May 17, 2004. While cancellation of a solicitation is within the discretion of the CPO, that discretion is limited in an advertised procurement, as in this matter, because "[t]he cancellation of an IFB after bid opening tends to discourage competition because it results in making all bidders' prices and competitive positions public without award," *Singleton Electric Co.*, CAB No. P-411, Nov. 15, 1994, 42 D.C. Reg. 4888, 4893. The Board, following well established Federal procurement precedent, has interpreted the best interests of the District in canceling an advertised procurement to require a "compelling" reason for the cancellation. *Id.* The general rule is expressed in the *Federal Acquisition Regulation*:

Preservation of the integrity of the competitive bid system dictates that, after bids have been opened, award must be made to that responsible bidder who submitted the lowest responsive bid, unless there is a compelling reason to reject all bids and cancel the invitation.

48 CFR 14.404-1(a)(1).

The District asserts that the cancellation is supported by the contracting officer's finding adopted by the CPO that the "District's specifications changed regarding the amount and types of vehicles that the District currently requires for leasing." AR at 3. Considering the solicitation in the aggregate, the contracting officer found that the number of gasoline fueled vehicles was reduced from 42 to 19 and the number of alternative fueled vehicles from 146 to 92. Although all of the solicitation's individual line items specify vehicles, the Board believes that the line items are so dissimilar<sup>1</sup> that the changed needs must be considered for each of the individual line items,<sup>2</sup> not for the aggregate number of vehicles in the total solicitation, particularly since the individual line items were to be priced separately. This conclusion is further supported by the fact that the solicitation contains no minimum order requirement, allowing the District to place orders for single vehicles from individual line items at any time during the term of the contract.

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<sup>1</sup> For example, 4 passenger subcompact sedans (item 6) and full-size cargo vans (item 7).

<sup>2</sup> In an analogous Federal vehicle procurement, the Comptroller General upheld "GSA['s] determin[ation] that its needs had changed and, as a result, elected to award the vehicles other than the subcompacts and cancel the requirement for the subcompacts." *Chrysler Corp.*, B-206943, Sept. 24, 1982, 82-2 Comp. Gen. Proc. Dec. ¶271.

Reduction of the estimated quantity required to zero for 14 of the line items clearly justifies cancellation of those items.<sup>3</sup> On the other hand, there appears to be no support for cancellation of the four line items for which the estimated needs are unchanged. Resolicitation would permit rebidding for identical items for which bid prices have been made public. The increase in estimated quantity of the remaining two line items, gasoline full-size cargo vans (item 8) from 4 to 7 and gasoline full-size, crew cab pick-up trucks (item 9) from 2 to 5 are insignificant for mass-market commercial vehicles.<sup>4</sup> Allowing other bidders to undercut previously submitted sealed bids for substantially identical line items would not enhance competition and fair play and would appear to create an impermissible auction. See, *C.P.F. Corp.*, CAB No. P-413, Nov. 18, 1994, 42 D.C. Reg. 4902. But for the inherent solicitation ambiguity discussed below, the Board would have found that the cancellation of line items 6-9 and 12-13 are without reasonable basis.

In addition to the lack of need for certain vehicle types requested in the solicitation, the contracting officer found that the District had an additional need for three types of alternative fuel vehicles, totaling 42 additional vehicles, not included in the original solicitation,. Increased requirements do not support cancellation of an IFB after opening. 27 DCMR 1530.3 provides:

After the opening of a bid, an IFB shall not be canceled and resolicited due solely to increased requirements for the items being procured. Award shall be made on the initial IFB and the additional quantity shall be treated as a new procurement.

If additional requirements for items included in a solicitation cannot support cancellation, cancellation clearly cannot be justified by the need for items not included in the original solicitation.

### Solicitation Defects

Upon review of the solicitation, the Board concludes that there are conflicting provisions with regard to the term of the contract requiring correction before a valid contract can be formed. Section F.1 entitled “Term of Contract” states:

F.1.1 The term of this contract shall be for a period of three (3) years from the date of award specified on page 1 of the contract.

F.1.2 The lease term for each vehicle ordered during the first (1st) year shall be for thirty-six (36) months from the date the vehicle is accepted by the District. Vehicles

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<sup>3</sup> 27 DCMR §1530.4(c) specifically authorizes cancellation of an invitation after bid opening when “[t]he supplies or services being contracted for are no longer required.”

<sup>4</sup> Orders in excess of the estimated quantity may be placed under a requirements contract. The instant solicitation provides:

. . . [t]he estimated quantities stated [in the solicitation] reflect the best estimates available. The estimate shall not be construed as a representation that the estimated quantity will be required or ordered, or that conditions affecting requirements will be stable. They shall not be construed to limit the quantities which may be ordered from the Contractor by the District or to relieve the Contractor of his/her obligation to fill all such orders.” AR Ex. 3, §B.3.

leased under the second (2nd) year shall be for a 24 months lease term. Vehicles leased under the third (3rd) year shall be for 12 months only. The delivery order, issued to the contractor, will stipulate whether the lease is for a 12, 24 or 36 months lease term.

Section B – SERVICE/DESCRIPTION/PRICE appears to be generally in agreement with Section F, except that it refers to the “first base year of the contract.” Section B.1 provides:

B.1 The Government of the District of Columbia, Office of Contracting and Procurement (OCP) on behalf of the Department of Public Works (the District) is seeking a contractor to provide leased vehicles. The District intends to retain vehicle leased during the first base year of the contract for a period of thirty-six (36) months lease term. Vehicles leased during the second year shall be retained for a period of twenty-four (24) months lease term, and vehicles leased during the third year shall be for a twelve (12) months lease term only.

The term “base year” is normally used in connection with a one year contract followed by options. Indeed, the solicitation requests price quotations at the end of Section B only for a one year contract term with two option years, as opposed to a three year contract. Similarly, the evaluation clause states that:

F.2.3 The government will evaluate bids for award purposes by adding the total price for all options to the total price for the base year requirement. Evaluation of options will not obligate the government to exercise the option(s).

If the contract were a three year contract, as the term clause clearly states, it would be improper to consider only the first of three years in the evaluation. Every contract must, at a minimum, establish the price, quantity and length of contract. The contradictory clauses make it impossible for any definitive determination of the length of the contract.

### CONCLUSION

Although the reasons asserted by the contracting officer do not support the canceling the solicitation, we conclude that the solicitation must be cancelled in order to correct the contradictory provisions dealing with the term of the contract.

**SO ORDERED.**

May 2, 2005

/s/ Matthew S. Watson  
Administrative Judge

/s/ Jonathan D. Zischkau  
Chief Administrative Judge

/s/ Warren J. Nash  
Administrative Judge