

DECISION

J. Lovely
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

7874

FILE: B-192301

DATE: October 2, 1978

MATTER OF: Kemp Industries, Inc.

DIGEST:

1. Compelling reason to cancel invitation exists when award under inadequate and ambiguous specifications of invitation would not satisfy Government's actual minimum needs.
2. Solicitation's terms must be stated clearly and precisely so that bidders can know what Government actually requires and can compete on equal basis.
3. When specifications are susceptible of two or more reasonable interpretations, they are ambiguous.

Kemp Industries, Inc. (Kemp), protests the cancellation of invitation for bids (IFB; DAAAC9-78-B-6131, issued by the United States Army Armament Materiel Readiness Command (ARRCOM), Rock Island, Illinois.

The IFB was issued on November 25, 1977, for 97 hydraulic power pack assemblies to be used with the M109 howitzer. A major component of the power pack assembly was a motor assembly (P/N 7973696). Though the Army intended to require the motor assembly to be manufactured by A. O. Smith Corporation (Smith) or Chrysler Corporation (Chrysler), the IFB failed to expressly state this intent.

Seven bids were opened on December 27, 1977. The apparent low bidder, U. B. Corporation, was asked to verify its bid because of the substantial difference between its price and the prices of the other low bidders. When U. B. Corporation discovered that the motor it had used in its bid was no longer manufactured by Smith but was manufactured by Chrysler for twice the Smith price, U. B. Corporation requested permission to withdraw its bid on January 5. Permission was granted on February 17.

As a result of U. B. Corporation's bid withdrawal, Kemp became the low bidder. A preaward survey, completed March 20, indicated that Kemp intended to obtain motor assembly P/N 7973696 from Bogue Electric Manufacturing Company (Bogue). Upon learning that Kemp planned to use a Bogue motor, the Artillery/Energetic Materials Division (DRSAR-LEM) advised that Kemp not be awarded the contract. DRSAR-LEM so advised because the Bogue motor does not have spare parts interchangeable with the Smith motor and because the Army's repair manuals correspond to the Smith (not the Bogue) motor. Consequently, the Bogue motor is not supportable through the Army supply system. Additionally, DRSAR-LEM stated that motor assembly P/N 7973696 is a sole-source Smith motor.

The Army contends that it intended to solicit and its minimum needs require the procurement of the Smith motor. In support of this contention, the Army cites several features of the IFB. The IFB incorporates a technical data package of 168 microfiche cards. Two of these cards relate to the motor assembly. Drawings on the cards show the front and side views of an electric motor. The drawings indicate that the item shown corresponds to a motor made by Smith. Additionally, one drawing displays a spare parts tabulation box with part numbers which correspond to the numbers of Smith motor parts. Furthermore, drawing notes reference a number for Smith brushes and metal finishes. The Army states that its repeated references to Smith parts evidence its intent to procure the Smith motor; additionally, that its inclusion of the spare parts tabulation box indicates its intent not to procure spare parts. Thus, the Army expected bidders to infer that its needs could be fulfilled only through purchase of the Smith motor as that was the only motor supportable with spare parts already on hand.

Kemp contends that because Smith has not manufactured the P/N 7973696 motor for several years, it believes that the IFB references to the Smith motor are inapplicable. It states that the Bogue motor satisfies all applicable drawing and specification requirements as drawing 7973696 merely indicates that the Smith motor corresponds to the item depicted. The drawing does not require a bidder to use the Smith motor. For identical reasons, Kemp believes the spare parts tabulation box is inapplicable. Finally,

Kemp states that it planned to use the Bogue motor because it believed that the Army had used this motor with earlier similar procurements.

When the Army learned that its specifications were capable of several interpretations and that only one interpretation would satisfy its actual needs, it moved to cancel the IFB. On June 23, the Army made the determination to cancel the IFB. This determination was based on the conclusion that its specifications were ambiguous.

Kemp protests the cancellation of the IFB. Essentially, it raises three issues. First, Kemp states that identical or similar specifications were used by the Army in the past and that to stop using these specifications at this point discriminates against Kemp. Second, Kemp states that the specifications are not ambiguous or inadequate; therefore, cancellation of the IFB is improper. Third, Kemp contends that cancellation of the IFB after bid opening violates the integrity of the competitive bid system through the unnecessary exposure of bid prices.

Once an agency discovers that its specifications are so inadequate as to assure that an award under the specifications would not satisfy its actual needs, that agency should cancel the IFB and resolicit the procurement. Dominion Engineering Works, Ltd., et al., B-186543, October 8, 1976, 76-2 CPD 324. The Government is not required to perpetuate deficient specifications nor to purchase items which do not fulfill its minimum needs. The Army states that due to its intent to use spare parts and repair manuals on hand in its supply system, its minimum need is the Smith/Chrysler motor. We have no basis on the record to question this position. Furthermore, the Army is revising its IFB and technical drawings for the resolicitation of hydraulic power pack assemblies to indicate clearly its need for the Smith/Chrysler motor.

The Army has not discriminated against Kemp. Instead, it appears that, because Kemp interpreted the specifications to permit use of the Bogue motor, Kemp acquired an unfair advantage over other bidders who interpreted the specifications to require use of the

more expensive Chrysler motor. The terms of a solicitation must be stated clearly and precisely so that bidders can know what is required and can compete on an equal basis. Boston Pneumatics, Inc., B-180798, November 14, 1974, 74-2 CPD 260. Here, the bidders were not informed of the actual needs of the Army and, thus, were bidding on their varying interpretations of those needs. To permit an award under this IFB to Kemp would discriminate against all other bidders.

Kemp refers to the Army's use of Bogue motors on similar contracts. This particular solicitation called for an M109 howitzer end use. As early as September 9, 1976, a Government Control Configuration Board decided that Bogue motors are not acceptable for M109 howitzer end use. They are acceptable, however, for M109A1B howitzer end use. Further, the Project Engineer M109 Series Howitzer has stated "The Bogue motor was never authorized for M109 series howitzers." Therefore, if any Bogue motors were accepted for M109 howitzer end use, it would have been in error. An improper acceptance in the past would not justify a repetition of the same error. Acme Paper & Supply Co., Inc., et al., B-187439, January 19, 1977, 77-1 CPD 38.

Though Kemp argues that the specifications are not inadequate or ambiguous, we believe that they are both. Specifications are inadequate when they do not state the Government's minimum needs; they are ambiguous when they are susceptible of two or more reasonable interpretations. Dittmore-Freimuth Corporation v. United States, 182 Ct. Cl. 507, 390 F.2d 664 (1968). The Armed Services Procurement Regulation provides for the rejection of all bids and the cancellation of the IFB when there is a compelling reason and when the specifications are inadequate or ambiguous. ASPR § 2-404.1(a) and (b)(i) (1976 ed.). It has been held that a compelling reason to resolicit a procurement exists when an award under the flawed specifications would not result in satisfaction of the Government's actual needs. Allied Contractors, Inc., B-186114, July 19, 1976, 76-2 CPD 55.

It is unfortunate that the Army's requirements were not described properly in the first instance and that the exposure of bid prices resulted from this mistake. However, in a situation like this, where the specifications are so inadequate and ambiguous that an award under them

will not satisfy the Government's actual needs and where bidders reasonably interpret the specifications in different ways, preservation of the integrity of the competitive bid system requires cancellation of the IFB.

Accordingly, the protest is denied.



Deputy Comptroller General
of the United States