

DECISION

12071 PH-I
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-195076

DATE: November 20, 1979

MATTER OF: Lapteff Associates DLG 03377

[Protest Against Cancellation of IFB After Bid Opening]

DIGEST:

GAO will not object to cancellation of IFB after bid opening where compelling reason exists to revise specifications to reflect Government's actual needs.

Lapteff Associates (Lapteff) protests the cancellation, after bid opening, of invitation for bids (IFB) DAKF40-79-B-0066, issued by the Department of the Army, Procurement Division, Fort Bragg, North Carolina. Lapteff's June 18, 1979, letter to our Office states that on May 9, 1979, the procuring activity notified Lapteff that it was the apparent low bidder. On June 11, Lapteff received notification that the IFB was canceled due to a change in requirements and a revision to the specifications. Lapteff contends it never received written justification to cancel the IFB and states in its September 28 letter that the original specifications were not inadequate or ambiguous. DLG 03386

On April 18, 1979, the IFB was issued for water and wastewater monitoring and analyzing for a 12-month period. Bids were opened May 8, 1979, and Lapteff's bid was determined to be the low bid received. The next low bidder, Environmental Laboratory of Fayetteville, Inc., protested any award to Lapteff contending that its bid was nonresponsive because it did not contain unit prices and the firm was not certified by the State of North Carolina as a private laboratory. Environmental also questioned whether Lapteff could meet the requirement that the time interval between sample pickup and analysis not exceed 1 hour for the nitrogen ammonia and chemical oxygen demand determination. DLG 03389

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During the course of reviewing the objections raised by Environmental, the contracting officer discovered that Lapteff had written him a letter dated April 27, 1979, which apparently had been overlooked prior to bid opening, raising some questions regarding the specifications. The letter stated:

"Section F- Part II - Schedule F.5b of the subject solicitation, states 'The time interval between sample pick-up by the Contractor and analysis shall also strictly conform to recommendations of above publications. In addition, the time interval between sample pick-up and analysis shall not exceed one hour for the nitrogen ammonia and the chemical oxygen demand determination.'

"The publication Methods for Chemical Analysis of Water and Waste, Environmental Protection Agency, Office of Technology Transfer, Washington, D.C., Table 2 Recommendation For Sampling and Preservation Of Samples According to Measurement, pages viii and X give a holding time of 7 days for COD and 24 hours for nitrogen ammonia with preservation conditions.

"Please explain why COD and nitrogen ammonia must be analyzed within one hour after collection if reliable results can be obtained within the holding times specified by EPA?"

Because of Lapteff's questions, the contracting officer requested the Facilities Engineer to review the specifications. After this review, the procuring activity decided that the specifications had overstated the Government's requirements. The contracting officer, therefore, decided to cancel the IFB after the Facilities Engineer recommended that the specifications be revised "to more accurately reflect requirements for water and wastewater monitoring."

The issue for determination is whether a "compelling" reason existed to justify canceling the IFB. Defense Acquisition Regulation (DAR) § 2-404.1(b) (1976 ed.) provides that an invitation for bids may be canceled after opening, but prior to award, when there is a compelling reason to reject all bids and the contracting officer determines in writing that inadequate or ambiguous specifications were cited in the IFB.

Contracting officers have broad powers of discretion in deciding whether a solicitation should be canceled; consequently, we do not question these decisions so long as they are reasonably founded. The Gerstenslager Company, B-192705, November 29, 1978, 78-2 CPD 375; Scott Graphics, Incorporated; Photomedia Corporation, 54 Comp. Gen. 973 (1975), 75-1 CPD 302. However, because of the potential adverse impact on the competitive bidding system of canceling an invitation after bid prices have been exposed, contracting officers, in the exercise of their discretionary authority, must find that a cogent and compelling reason exists that warrants cancellation. Engineering Research, Inc., 56 Comp. Gen. 364 (1977), 77-1 CPD 106. Generally, the use of inadequate specifications provides a sufficient basis for invitation cancellation. Revere Supply Co., Inc., B-187154, January 12, 1977, 77-1 CPD 21. Specifications are inadequate when they do not state the Government's actual needs. Kemp Industries, Inc., B-192301, October 2, 1978, 78-2 CPD 248.

In its letter of September 28, 1979, Lapteff contends that since it never received a reply to its April 27 letter, its bid was based on complying with the original specifications and that an award should be made to it as the low responsive bidder. Assuming, arguendo, that Lapteff's bid was responsive and the firm responsible, the fact remains that the specifications overstated the Government's actual needs. The procuring activity agreed with Lapteff's prebid-opening contention that there was no need for the specifications to require that COD and

nitrogen ammonia be analyzed within 1 hour after collection. While it is unfortunate that the IFB was not amended prior to bid opening to eliminate the restrictive specifications, that does not alter the fact that a "compelling reason" existed to cancel the IFB.

Based upon the entire record before us, we conclude that the contracting officer's decision to cancel the IFB was reasonable and, therefore, find no basis for questioning that decision.

The protest is denied.

A handwritten signature in dark ink, appearing to read "Milton J. Acosta". The signature is fluid and cursive, with the first name "Milton" being the most prominent.

For the Comptroller General
of the United States