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DECISION



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

FILE: B-193902

DATE: March 12, 1980

MATTER OF: Anatek Manufacturing Co., Inc. DLG04094

DIGEST:

Where specification change upon which cancellation of invitation was based has not been shown to be minor and where decision of contracting agency to cancel has not been definitively shown to be unreasonable, no objection to cancellation can be made.

Anatek Manufacturing Co., Inc. (Anatek), the low, responsive and only responsible bidder, protests the AGC00840 cancellation of invitation for bids No. DAAA09-78-B-6882, issued by the United States Army Armament Materiel Readiness Command for the procurement of nitrogen cylinders.

The IFB originally contained a 7,500 psi cylinder hydrostatic burst strength test requirement. The specifications were amended to increase this to 10,000 psi. Sparklet Devices, Inc. (Sparklet), protested the inclusion of the increased requirement in the specifications and did not bid. Sparklet contended that the requirement was restrictive by precluding it from supplying its cylinder, which met all necessary safety considerations. Sparklet asserted that a complete retooling of its production machinery would be necessary to comply with the 10,000 psi standard. The contracting agency agreed with Sparklet and canceled the invitation after bid opening. DLG04095

The agency advises that the increase to 10,000 psi was made to insure that a cylinder meet the 2:1 safety factor required by Federal safety regulations. This factor assures that a cylinder would rupture only if pressure twice that contained in a cylinder were applied. A 2:1 safety factor could be met, for example, by dividing a hydrostatic test pressure at burst of 10,000 psi by a cylinder's contents pressure of 5,000 psi. By

[Protest Against Solicitation CANCELLATION]

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the solicitation's stating only the pressure at which the cylinder would burst (10,000 psi), Sparklet argued, the agency failed to assure compliance with a 2:1 safety factor because the amount of pressure in the cylinder could vary. Sparklet's cylinder allegedly meets the required 2:1 safety factor--even though it does not meet the 10,000 psi test--because its cylinder's design achieves a low internal pressure which, in turn, lowers the required hydrostatic test pressure to well below 10,000 psi.

Anatek maintains that it should have received an award for the following reasons. First, the cancellation occurred after the prejudicial disclosure of its bid price. The cancellation was unnecessary since the 2:1 safety factor test is merely a refinement of the 10,000 psi requirement. The 10,000 psi requirement was stated to ensure compliance with a 2:1 safety factor by considering the design limitations imposed by the cylinder specifications and the state of the art. These limitations would permit only an immaterial variance of + 500 psi from the requirement of 10,000 psi to comply with a 2:1 safety factor. Second, Sparklet's statement that it did not bid due to major retooling is of no consequence since this retooling would still be necessary. This is so because as stated above, the 2:1 safety factor requires a psi figure of at least 9,500, which is well in excess of that which Sparklet's cylinders can withstand. Therefore, the argument that additional competition would be obtained on resolicitation is faulty.

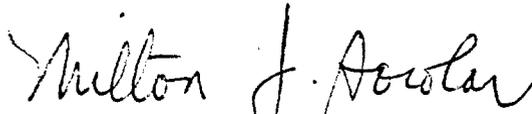
We are not convinced that cancellation to eliminate the 10,000 psi standard and substitute a 2:1 safety factor is insignificant or left Sparklet in its original position. Contrary to the Anatek position that a 2:1 safety factor would create only an immaterial variance from the 10,000-psi requirement, the contracting agency has supplied data which show that the 2:1 safety factor could be met with a hydrostatic burst strength of somewhat below 9,000 psi. In this regard, Sparklet alleged, and Anatek has not rebutted, that Sparklet's previously supplied cylinders had a burst strength of between 8,000-9,000 psi. The above indicates that Sparklet's cylinders meet the 2:1 safety factor requirement and no major retooling would be needed. Therefore, the specifications as amended to require 10,000 psi clearly

precluded Sparklet from offering its product, and overstated the Government's needs.

The cancellation of a solicitation after bid opening but prior to an award is proper where the specifications no longer represent the Government's legitimate needs. Cottrell Engineering Corporation, B-183795, September 22, 1975, 75-2 CPD 165. A decision to cancel is subject to objection upon review by our Office only if it is clearly shown to be without a reasonable basis. Semiconductor Equipment Corporation, B-187159, February 18, 1977, 77-1 CPD 120; ITE Imperial Corporation, Subsidiary of Gould, Inc., B-190759, August 14, 1978, 78-2 CPD 116.

Under these standards, we do not believe that Anatek has clearly demonstrated any unreasonableness in the agency's actions. Therefore, we must agree with the contracting activity's determination that the cancellation was proper inasmuch as the specifications did not represent the minimum needs of the Government and limited competition.

Protest denied.



For the Comptroller General
of the United States