

Crowley
PL-2 14398

DECISION



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

[Protest of IFB Cancellation]

FILE: B-196325

DATE: July 28, 1980

MATTER OF: Canadian Commercial Corporation

DIGEST:

Cancellation of IFB after bid opening but prior to award was proper where solicitation specifications did not represent the minimum needs of the Government.

Canadian Commercial Corporation (CCC) protests the cancellation of invitation for bids (IFB) DAAA09-79-B-4019, issued by the U.S. Army Armament Materiel Command (Army) for engine lathes. CCC alleges that the low bidder was not responsive to IFB requirements and that CCC should be awarded the contract as the lowest responsive, responsible bidder. For the reasons set forth herein, we determine that the protest is without merit.

The IFB was issued in December 1978 and contained minimum requirements for the "carriage bearing length or ways" of 13-1/2 inches and "width of bridge" of six inches. The low bidder, Rem Sales Incorporated (Rem), wrote the Army in December and requested that the minimum requirements for the carriage bearing length be reduced to 11 inches and width of bridge to 5-1/2 inches. By letter of April 26, 1979, the contracting officer wrote to Rem and conditionally agreed to a reduction in the carriage bearing length from 13 1/2 inches to 11 inches if the bridge width on Rem's product was increased from 5-1/2 inches to 6 inches. The contracting officer advised that a formal amendment to the IFB would be issued to incorporate the change and increase the quantity. An amendment to the IFB was issued in May 1979, but no change was made to the requirement for a 13-1/2 inch carriage bearing length. Thereafter, Rem wrote the contracting officer in June 1979, which stated in part as follows:

~~011427~~

112874

"It is our intention to submit a bid on the (82) 13" Swing Engine Lathes in the above-referenced solicitation. We appreciate receiving your letter of 26 April in response to our 22 December 1978 letter which requested minor deviations and amendments to the general specifications."

On July 3, 1979, the IFB was amended again and various technical changes were made to the specifications but no change was made to minimum required length of 13-1/2 inches for the carriage bearing. An additional amendment to the solicitation increased the quantities from 82 to 96 but made no changes to the carriage bearing length.

Rem's bid, which was one of three received, offered to provide a lathe with a carriage bearing length of 11 inches and specifically referenced the letter of April 26, 1979, from the contracting officer. CCC and the other bidder bid on the basis of a lathe with a 13-1/2 inch carriage bearing length as required by the solicitation. The bid of Rem was more than \$5,000 per lathe below the bid of CCC. After bid opening, Rem alleged a mistake in its bid and requested permission to increase its bid prices. The requested corrections (based on an 11-inch carriage bearing length) would have made the bid about \$3400 per unit less than CCC's.

The Army asserts that before it could make a determination on Rem's alleged mistake, it became aware of the fact that all bidders had not submitted their bids on the same basis, i.e., Rem bid on a carriage bearing length of 11 inches while CCC and the third bidder bid on a length of 13-1/2 inches. The Army states that it was the intention of the contracting officer to change the minimum requirement for the carriage bearing length from 13-1/2 inches to 11 inches as expressed in his letter of April 26, 1979, to Rem, but this was not done through oversight or clerical error. Because all bidders were not bidding on the same requirement and the IFB did not state the Government's minimum requirement, the contracting officer then canceled the solicitation in accordance with Defense Acquisition Regulation (DAR) 2-404.1(b)(i) (1976 ed.) as "inadequate or ambiguous specifications were cited in the invitation."

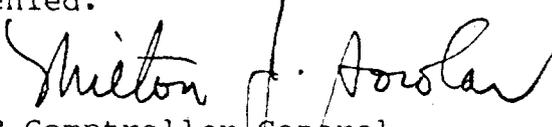
DAR 2-404.1(a) provides in substance that after bids have been opened award must be made to the lowest responsible bidder unless there is a compelling reason to reject all bids and readvertise. DAR 2-404.1(b) lists a number of instances when invitations may be canceled after opening but prior to award when such action is consistent with DAR 2-404.1(a) such as when "(i) inadequate or ambiguous specifications were cited in the invitation; (ii) specifications have been revised; * * * (v) bids received indicate that the needs of the Government can be satisfied by a less expensive article differing from that on which the bids were invited * * * (viii) for other reasons, cancellation is clearly in the best interests of the Government."

Here, there was clearly a deficiency in the specifications in the stated minimum carriage bearing length of 13-1/2 inches as the Government's minimum needs only required a length of 11 inches. The cancellation of an IFB after bid opening but prior to award is proper where the specifications no longer represent the Government's legitimate needs. Anatek Manufacturing Co., Inc., B-193902, March 12, 1980, 80-1 CPD 192; 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. Anatek Manufacturing Co., Inc., supra; Semiconductor Equipment Corporation, B-187159, February 18, 1977, 77-1 CPD 120.

Under the above standards, we consider the Army's determination to cancel to have been proper inasmuch as the specifications did not represent the minimum needs of the Government. Anatek Manufacturing Co., Inc., supra.

In view of the foregoing, the question of whether Rem's bid was responsive is moot and need not be considered.

The protest is denied.


For the Comptroller General
of the United States