

117415

20696

*Page 2 of 2*

**DECISION**



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

FILE: B-206030

DATE: February 4, 1982

MATTER OF: Central Mechanical, Inc.

**DIGEST:**

Cancellation of IFB after bid opening was proper where portions of solicitation specifications were ambiguous and did not represent the minimum needs of the Government.

Central Mechanical, Inc. protests the cancellation of invitation for bids (IFB) No. F41800-81-B-0670 by the Air Force Contracting Center, San Antonio, Texas. Because it is clear from Central's initial submission that its protest has no legal merit, we summarily deny the protest.

The solicitation called for bids to repair various buildings at Lackland Air Force Base, Texas. On October 28, 1981, three bids were opened and two responsive bids were received. Bid prices received were double the Government estimate. On December 22, the contracting officer canceled the IFB for two reasons. First, the contracting officer determined that portions of the specifications were ambiguous. Specifically, Central was advised in a letter from the Air Force that IFB -0670 had been canceled because "Schedule 'C', Group II, Item No. 3 requires work on 2nd floor only while corresponding drawing reflects that work is required on 2nd and 3rd floor." Second, the contracting officer determined that the IFB failed to contain a mandatory Air Force specification concerning "hot asphalt [treatment] of lead shower pans." Central filed the protest in our Office on January 8, 1982.

Subsection (a) of Defense Acquisition Regulation (DAR) § 2-404.1 provides that after bids have been opened award must be made to the lowest responsive, responsible bidder, "unless there is a compelling reason to reject all bids and cancel the invitation." Subsection (b)(i) further states that "invitations for

bids may be canceled after opening but prior to award when such action is consistent with (a) above and the contracting officer determines in writing that inadequate or ambiguous specifications were cited in the invitation." As noted above, the Air Force justified its decision to cancel the solicitation on the grounds that the original invitation was both ambiguous and failed to contain a mandatory specification. We have recognized on many occasions that the decision to cancel an invitation is an administrative matter, and we will not challenge the judgment of the contracting officer unless the protester can demonstrate that the decision was clearly arbitrary, capricious or not supported by substantial evidence. Cottrell Engineering Corp., B-183795, September 22, 1975, 75-2 CPD 165; Uni-Con Floors, Inc., B-193016, April 19, 1979, 79-1 CPD 278.

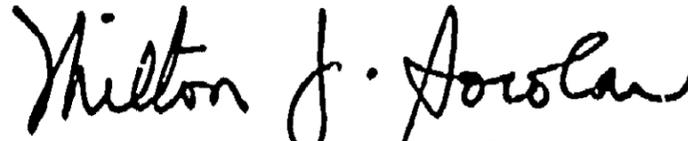
Central concedes that it interpreted the IFB as requiring the work to be performed on two floors and it agrees with the contracting officer's assessment that the other bidders probably shared this misunderstanding. The protester contends, however, that the fact that all the bids apparently were for twice the work actually to be performed did not provide an adequate justification for canceling the solicitation after bid opening. Central argues that since Government contract provisions allow for reduction in the contract price for deductive changes, that is, reduced work, the Government should award a contract based on the bids received and then exercise its right to reduce the work "on a pro rata basis" if it does not require work to be performed on two floors. This argument is without merit.

While recognizing that contract changes or modifications may be required subsequent to award, we have cautioned that this "is not to say that the contracting parties may employ a change in the terms of the contract so as to interfere with or defeat the purpose of competitive procurement." E.R. Hitchcock & Asscc., B-182650, March 5, 1975, 75-1 CPD 133. We have held that awarding a contract with the intention of significantly modifying the contract after award is improper. A & J Manufacturing Co., 53 Comp. Gen. 838 (1974), 74-1 CPD 240. See, also, Midland Maintenance, Inc., B-184247, August 5, 1976, 76-1 CPD 127.

Here, there was clearly a major deficiency in the specifications regarding the quantity of work to be performed. We therefore consider the Air Force's determination to cancel to have been proper inasmuch as the specifications did not reflect the minimum needs of the Government. See Anatek Manufacturing Co., Inc., B-193902, March 12, 1980, 80-1 CPD 192.

In view of the foregoing, the question of the failure of the IFB to contain the mandatory specification concerning asphalt treatment need not be considered. We note in passing, however, that failure to include a mandatory specification in an IFB may form an independent basis for cancellation. Metropolitan Ambulance Service, B-184304, January 14, 1976, 76-1 CPD 23.

The protest is summarily denied.



Acting Comptroller General  
of the United States