

**DECISION**

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

*Weis Kopf*  
*23/82*

**FILE:** B-206012.3

**DATE:** October 4, 1982

**MATTER OF:** Essex Electro Engineers, Inc.

**DIGEST:**

1. GAO denies protest that an agency lacked sufficient justification to cancel an IFB for diesel engine generator sets after bid opening, since the agency learned that generator sets were available within the agency and the requirement therefore no longer existed.
2. GAO dismisses protest ground, submitted by protester challenging cancellation of IFB, that the agency has purposely barred the protester from receiving any contracts for the item, since the cancellation was proper and therefore does not suggest a pattern of intentionally precluding awards to the protester.

Essex Electro Engineers, Inc. (Essex) protests the Federal Aviation Administration's (FAA) cancellation of invitation for bids (IFB) No. DTFA-02-81-B-00687. The canceled solicitation was for twelve 15 kilowatt (kw) diesel engine generator sets and an option to purchase an additional three sets. The protester also complains that FAA has purposefully precluded Essex from receiving awards for 15 kw or 30 kw generator sets since 1979. We deny the protest.

FAA issued the IFB on August 27, 1981 for the purpose of replacing obsolete generator sets in certain National Airspace System airports for which FAA requires backup power sources. Although Essex was the second low bidder, the low bidder, Introl Corporation, was deemed ineligible for award. Introl Corporation filed a protest with this Office, and the agency withheld award pending our decision, which we issued on February 24, 1982 denying Introl's protest. See Introl Corporation, B-206012, February 24, 1982, 82-1 CPD 164.

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FAA reports it learned during the delay that generator sets could be made available by transferring decommissioned sets in airports which do not require backup power sources. According to FAA, it discovered the availability of the generator sets as a result of a survey initiated prior to the issuance of the canceled IFB. After determining that FAA could meet its needs by utilizing decommissioned units, the technical office that issued the purchase request asked the contracting officer, by memo dated March 16, to cancel the IFB because "all requirements for 15 kw engine generators have been satisfied through reuse of units decommissioned at lower priority facilities." Based on this memo, the contracting officer determined that FAA no longer needed to procure the generator sets, and canceled the solicitation.

Essex contends that in fact there are no decommissioned generator sets in acceptable condition, and that FAA canceled the solicitation simply to avoid contracting with Essex. In fact, the protester points out, contrary to the statement in the memo upon which the contracting officer based the cancellation, that all requirements "have been satisfied," no decommissioned generator sets had been utilized to meet the IFB's requirements at the time FAA canceled the IFB, and FAA apparently has transferred no more than two decommissioned units for that purpose since then.

Based on this record, we find the cancellation was proper. Federal Procurement Regulations § 1-2.404-1(b)(2) (1964 ed.) authorizes the cancellation of an IFB after bid opening where the supplies or services are no longer needed. In this regard, we have held that where the contracting officer learns that required supplies are available at a lower or no cost from an intra-Government source, the contracting officer not only has a right to cancel a solicitation for such supplies, but must do so. See Keco Industries, Inc., 54 Comp. Gen. 215 (1974), 74-2 CPD 175.

Essex has not presented any evidence to show that decommissioned generator sets are not available and capable of meeting FAA's needs. Where the only evidence with respect to a disputed question of fact consists of contradictory assertions by the protester and the agency, the protester has failed to meet its burden of affirmatively proving its case. John Carlo, Inc., B-204928, March 2, 1982, 82-1 CPD 184. Thus, we must accept the agency's statement of the facts with regard to the availability and condition of generator sets.

We point out it is irrelevant to the legality of the cancellation that the needs reflected in the IFB in fact had not been satisfied at the time of the cancellation as the contracting officer was advised. Our inquiry is to determine if the cancellation complied with applicable statutes and regulations in light of the totality of the circumstances as they existed at that time. Universal Communications Systems, Inc.; Fisk Telephone Systems, Inc., B-198533, April 27, 1981, 81-1 CPD 321. The fact is that FAA had established the existence of decommissioned generator sets to meet its needs so the purchase of such sets was not necessary, and this availability in itself supports the cancellation under the procurement regulations.

Thus, we conclude that the cancellation properly was based on the availability of adequate decommissioned generator sets so that the solicited items were not necessary to meet FAA's needs.

We note, however, that there indeed appears to be some question about FAA's current intentions towards the decommissioned units because FAA has transferred only two decommissioned units despite the passage of approximately six months since the IFB was canceled. In addition, it appears that FAA intends to purchase two 15 kw generator sets to be installed at Anchorage, Alaska. Although Anchorage is not one of the airports listed in the purchase request supporting the canceled IFB (the solicitation itself did not identify the locations for the generators), these circumstances may indicate that FAA still has a need for the sets listed in the canceled IFB. We are bringing this matter to the attention of the Secretary of Transportation, and recommending that if FAA no longer intends to use decommissioned generator sets, the agency should consider the practicability of reinstating the canceled IFB before soliciting new bids. See Baker Manufacturing Company, Inc., et al., 59 Comp. Gen. 573 (1980), 80-2 CPD 1.

We are also concerned that FAA issued the canceled IFB before determining the results of its survey of decommissioned generator sets. As a result, the procurement reached an advanced stage before cancellation, which we do not believe enhances the integrity of the competitive procurement system. See Honeywell Information Systems, Inc., B-191377.2, December 6, 1979, 79-2 CPD 392. We therefore are recommending more careful procurement planning to avoid similar situations in future procurements.

Since we find that the cancellation was proper, the circumstances of this procurement do not support the protester's allegation that FAA improperly has barred Essex from contracts for 15 kw or 30 kw engine generator sets.

The protest is denied.

*for* *Harry R. Van Cleave*  
Comptroller General  
of the United States