

**DECISION**

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

*Pogany  
24688*

**FILE:** B-209704.2**DATE:** March 31, 1983**MATTER OF:** Sermor, Inc.**DIGEST:**

Apparently conflicting award provisions do not provide a cogent or compelling reason to support the cancellation of an invitation for bids after opening where award will serve the actual needs of the Government and the facts do not show that the award will be prejudicial to other bidders.

Sermor, Inc. protests the cancellation after bid opening of invitation for bids (IFB) No. DAAA09-82-B-5584, issued by the United States Army Armament Materiel Readiness Command for a quantity of smoke grenade launchers and related accessories. We sustain the protest.

The schedule contained five separate contract line items (Nos. 0001-0005). Section "M" of the IFB, "EVALUATION AND AWARD FACTORS," included the following two clauses:

"M.1 EVALUATION OF BIDS FOR MULTIPLE AWARDS (DAR 7-2003.23(b)) (1975 Oct.)  
In addition to other factors, bids will be evaluated on the basis of advantages or disadvantages to the Government that might result from making more than one award (multiple awards). For the purpose of making this evaluation, it will be assumed that the sum of \$100 would be the administrative cost to the Government for issuing and administering each contract awarded under this invitation, and individual awards will be for the items and combination of items which result in the lowest aggregate price to the Government, including such administrative costs.

*025057*

**"M.9 EVALUATION OF OFFERS**

An offeror must quote on all items in this solicitation to be eligible for award. All items will be awarded only as a unit. Evaluation of offers will be based, among other factors, upon the total price quoted for all items."

The Army received six bids on September 23, 1982, the bid opening date. Duroyd Manufacturing Company, Inc. was the low bidder on line item No. 0001, having bid only on line items Nos. 0001 and 0002. All other bidders submitted bids for all five line items. Duroyd, while acknowledging that items Nos. 0003, 0004 and 0005 were not within its manufacturing capability and were not economically susceptible to subcontracting, subsequently filed a protest with our Office contending that it was nonetheless entitled to a separate award for item No. 0001 based on paragraph M.1 of the solicitation. (The protest file was closed after we were advised of the cancellation.)

The Army reports that its intent in issuing the solicitation was to make a single award to the low, responsive bidder for all items at the low aggregate price. However, because of the conflicting award evaluation provisions, and to avoid prejudice to any of the bidders, the contracting officer determined that an ambiguity existed which necessitated cancellation of the solicitation. The Army is currently resoliciting the requirement with a single award provision.

Sermor contends that there was no cogent reason for the cancellation. In essence, Sermor submits that the solicitation was neither confusing nor ambiguous and that the low bidder, having failed to insert prices for all items, submitted a nonresponsive bid. Moreover, Sermor contends that cancellation and readvertisement after exposure of its bid would have an obvious prejudicial effect.

Our Office will not question the broad authority of a contracting officer to reject all bids and readvertise when a "compelling" reason exists to do so. Spickard Enterprises, Inc.; Cottrell Engineering Corporation, 54 Comp. Gen. 145 (1974), 74-2 CPD 121. However, we have held that the use of deficient provisions is not a "compelling" reason to cancel an IFB and readvertise unless award under the solicitation as issued would not

serve the actual needs of the Government and would prejudice other bidders. GAF Corporation; Minnesota Mining and Manufacturing Company, 53 Comp. Gen. 586 (1974), 74-1 CPD 68.

Here, the Army states that cancellation of the IFB was warranted since at least one bidder relied on the multiple awards provision. The Army also believes other bidders may have bid differently if they knew for certain that only one contract would be awarded. The Army therefore concludes that the cancellation was proper.

Since award under the solicitation as issued would serve the actual needs of the Government, the primary issue before us is whether the competition will be prejudiced by an award under the initial solicitation. See Isometrics, Inc., B-192151, September 13, 1978, 78-2 CPD 198. We do not believe that there would be prejudice to the competition if an award to Sermor based on its bid for all items is made.

First, Duroyd, by its own admission, is unable to compete under a resolicitation with a single award provision. Second, all five remaining bidders submitted their bids for all items under the solicitation and thereby assumed the risk that only one award would be made. While the solicitation does state that consideration would be given to the advantages that might result from making more than one award, there is no evidence in the record to indicate that the five bidders which bid on all items were affected by this provision. We therefore believe that the Army's concerns are more theoretical than real and that cancellation after bid opening is not appropriate in this instance.

In view of the above, we consider that the solicitation was erroneously canceled, and that no cogent or compelling reason exists to allow the cancellation to stand. Our Office has sanctioned the reinstatement of a canceled invitation in the past when to do so would work no prejudice on the right of others and would, in fact, promote the integrity of the public bidding system. Isometrics, Inc., supra. The circumstances of this procurement appear to lend themselves to reinstatement.

B-209704.2

Accordingly, the protest of Sermor is sustained. The resolicitation should be canceled and award should be made under the initial solicitation.

*for* Milton J. Acosta  
Comptroller General  
of the United States