

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

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FILE: B-210283

DATE: September 20, 1982

MATTER OF: Powertronic Systems, Inc.

DIGEST:

Agency properly canceled an IFB after bid opening where as a result of post-opening events the need for the items became urgent, and the agency's own in-house facility could produce and deliver the items faster than could be required under the IFB.

Powertronic Systems, Inc. protests the cancellation after bid opening of invitation for bids (IFB) No. N00421-82-B-0211, issued by the Department of the Navy for the production and delivery of 12 converter interface units, with options for as many as 80 more units during the subsequent 2-year period. A converter interface unit (CIU) converts analog radio signals into digital form and transmits them to shipboard computers. The Navy canceled the IFB because it was ambiguous, did not clearly reflect the agency's needs, and contained a delivery schedule that had become obsolete because the need for CIUs had become urgent and an accelerated schedule could be met only if the CIUs were produced in the in-house facility at the Naval Avionics Center in Indianapolis. Powertronic contends that the main reason for the cancellation was to avoid an award to it, and that the ambiguity and urgency reasons were contrived by the Navy to accomplish this purpose.

We deny the protest.

When the bids were opened on September 21, 1982, the low bid was determined to be nonresponsive, which left the bid of Powertronic as the lowest responsive bid. The Navy states that a pre-award survey of the Powertronic facility first alerted the contracting officer to the possibility that the IFB might be ambiguous as to whether the contractor was expected to build the CIUs strictly in accordance with the IFB's drawing package, or whether the drawing package had been furnished for information purposes only. In addition, the using agency insisted that the contractor

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have certain expertise and experience with the equipment with which the CIUs interface so that the contractor could be called upon to support the CIUs in the fleet. The procurement office, however, had doubts as to whether these qualifications were required by the IFB.

The review and discussions of these matters continued until April 14, 1983 when the solicitation was canceled primarily because the need for a portion of the CIUs had become urgent due to a decision by the Chief of Naval Operations prohibiting the expected diversion to the fleet of CIUs that had been designated for training. The urgent portion of the requirement (25 units) was then given to the Naval Avionics Center to produce in its facilities because the Navy believed that only in that manner could the CIUs be obtained as promptly as needed. In addition, the Naval Avionics Center was given the responsibility to validate the drawings. Powertronic was then notified of the cancellation, and was informed that the Navy anticipated a competitive procurement during the next fiscal year for the remaining units and that Powertronic would be solicited.

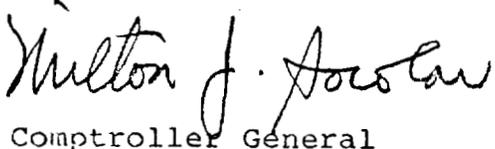
The procurement regulations permit cancellation after bid opening when cancellation is in the best interests of the Government. Defense Acquisition Regulation § 2-404.1 (b)(viii) (1976 ed.). Because of the potential adverse impact on the competitive bidding system of canceling an IFB after bid prices have been exposed, however, the justification advanced by a contracting officer for exercising his discretionary authority to cancel must be cogent and compelling. NonPublic Educational Services, Inc., B-207751, March 8, 1983, 83-1 CPD 232. The determination as to whether such a justification exists is an administrative one that is not subject to legal objection unless the protester can demonstrate that the decision was arbitrary, capricious, or not supported by substantial evidence. McGregor Printing Corporation, B-207084, B-207377, September 20, 1982, 82-2 CPD 240.

Award of a contract to Powertronic would have obligated the firm to do only that on which the bid was based: to deliver two first articles in July of 1983, and the last of the 12 units in September 1984. That schedule was based on the Navy's expectation that CIUs to be used in training could be diverted for the fleet requirement. The fact is, however, that after bid opening the procurement

office found that the training CIUs could not be used, so that the 12 units in issue (and 13 more) were needed beginning in February of 1983, with delivery completed by January of 1984. While Powertronic suggests that the Naval Avionics Center may well have problems delivering the bulk of the CIUs on time--the matter was not even referred to the Center until after mid-April of 1983--Powertronic does not argue that it could meet the Navy's need in a timeframe at all comparable to the one under which the Naval Avionics Center is working. We believe that when the Government can build an urgently needed item faster in-house than by contracting, cancellation after bid opening of an IFB that would not meet the urgent need is in the best interest of the Government. See Bush-Herrick, Inc., B-209683, June 20, 1983, 83-1 CPD 669.

Because we believe the IFB properly was canceled for the reasons discussed above, we need not determine whether it also could have been canceled based on ambiguous specifications.

The protest is denied.

for 
Comptroller General
of the United States