

DECISION

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

20675

FILE:

B-211359.2

DATE: October 31, 1983**MATTER OF:**

Garrison Construction Company

DIGEST:

1. Contracting officers have broad discretion in deciding whether to cancel a solicitation, and GAO will not overturn such a decision unless there is an abuse of that discretion. Where there has been a significant change in the agency's needs since bid opening, cancellation of the solicitation is proper.
2. Provision in section 2-404.1(a) of the Defense Acquisition Regulation (1976 ed.) that prohibits cancellation of a solicitation solely because of increased requirements for items that the agency is procuring is inapplicable since the protested procurement is for repair and maintenance and not for the supply of items.
3. Award to the low bidder with the intention to negotiate the necessary changes caused by an increase in the scope of the contract work is improper.
4. As a general rule, whether a contracting agency should contract out for any particular work or perform it in-house is a policy matter which GAO will not review. The only exception to this rule is where the agency issues a competitive solicitation for the purpose of ascertaining the cost of contracting. This exception is inapplicable here. Therefore, GAO will not review the agency's decision to perform in-house the increased contract work rather than resolicit after the cancellation of the protested solicitation.

Garrison Construction Company (Garrison) protests the cancellation of invitation for bids (IFB) N62466-83-B-0071 issued by the Department of the Navy. The IFB was for the

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maintenance of the USN YFP-14 power barge located at the Polaris Point Naval Station, Guam.

Garrison, the low bidder under the IFB, contends that the Navy did not act in good faith with respect to the cancellation of the IFB. Garrison alleges that at the same time that Garrison was being requested to extend its bid, the Navy was taking steps to cancel the IFB. Garrison also contends that Defense Acquisition Regulation (DAR) § 2-404.1(a) (1976 ed.) prohibits cancellation solely on account of a procuring agency's increased requirements for the item being procured.

In the alternative, Garrison seeks money damages for the harm it has suffered because of the Navy actions.

For the reasons set forth below, we find Garrison's protest to be without merit.

Seven bids were received in response to the IFB. Because Garrison's low bid of \$218,808 was well below the government's estimate of \$424,178 for the contract work, the Navy held a meeting with Garrison to discuss the possibility of an error in the company's bid. While Garrison indicated a difference from the Navy in the interpretation of the IFB specifications pertaining to the utilization of barge operating personnel, the company subsequently confirmed its bid after the meeting.

On the basis of operating experience on the barge following bid opening and on the basis of an inspection of the barge after bid opening, the Navy in the meantime had identified a need to make a significant upgrading in the maintenance and readiness of the barge. Specifically, the Navy determined that the level of monthly testing operations had to be increased from a period of not less than 24 hours to a period of not less than 48 hours. The Navy also determined that the barge's boiler had to be overhauled in order to maintain the readiness of the barge.

The Navy further decided not to issue a new solicitation, but instead to have the barge's needed repair and maintenance work performed in-house by the Navy Public Works Center in Guam. This was primarily because the Navy believed that there was an insufficient number of workers on Guam who had the special trades that a contractor would need in order to perform the required work.

As indicated above, Garrison contends that the IFB was not canceled in good faith. Garrison emphasizes that the Navy twice requested that Garrison extend its bid for 60 days and Garrison gave such extensions. Garrison further emphasizes that almost 1 month before a second bid extension was requested from the company, the Navy advertised in a local newspaper on Guam for workers to perform maintenance on the YFP-14 power barge. In Garrison's opinion, this advertisement also militates against the Navy's determination that specialized trades did not exist on Guam in sufficient numbers. Finally, Garrison charges that the Navy knew 8 months prior to the issuance of the IFB that the boiler on the barge was inoperative and, thus, in need of overhaul.

As to the Navy's additional operation and maintenance requirements in themselves, Garrison argues that this additional work should either have been treated in a separate procurement or have been made part of an amendment to any contract awarded under the IFB. Garrison points out that DAR § 2-404.1(a) provides that where there are increased requirements for items being procured, an award should be made on the initial solicitation and the additional quantity should be treated as a new procurement.

DAR § 2-404(1)(a) provides that award must be made to the low, responsive, responsible bidder unless there is a compelling reason to reject all bids and cancel the solicitation. Section 2-404(1)(b) lists a number of reasons sufficiently compelling to justify cancellation of a solicitation. Included among those reasons are that "inadequate or ambiguous specifications were cited in the invitation," "specifications have been revised" and "for other reasons, cancellation is in the best interest of the Government." Contracting officers have broad discretion in deciding whether to cancel a solicitation, and we will not overturn such a decision unless there is an abuse of that discretion. Aul Instruments, Inc., B-195887, February 6, 1980, 80-1 CPD 98.

The record shows that in addition to a yearly boiler overhaul and a testing operation increase from 24 hours to 48 hours, the other increased requirements for the YFP-14 barge that the Navy determined after bid opening were calibration of gauges and automatic combustion control instruments, increased inspection reports and repairs based on job orders. The record further shows the revised government estimate for the entire work after the cost of this additional work increase was included rose from the original

estimate of \$424,178 to \$574,449. In our view, this significant change in the scope of the required contract work is a reasonable basis for cancellation. See Allied Repair Service, Inc., B-207629, December 16, 1982, 82-2 CPD 541.

With respect to Garrison's argument that the above-described additional contract work can be treated as a new procurement, it is true that an increase in the quantity of an item being procured generally does not justify cancellation of an invitation after bid opening. See DAR § 2-404.1 (a). However, the Navy was not procuring the supply of contract items here. Rather, the Navy was procuring the services necessary to perform the maintenance on the YFP-14 barge required by the IFB. Therefore, we find inapplicable the requirement of DAR § 2-404.1(a) that, where there is an increase in the need for a contract item, award be made on the initial invitation and the increased quantity be treated as a new procurement.

As to Garrison's argument that the Navy's need for an increased level of maintenance and overhaul of the YFP-14 barge be handled by amendment to any contract awarded Garrison, we have held that the integrity of the competitive bid system precludes an agency from awarding a contract competed under given specifications with the intent of changing to different specifications after award. See A & J Manufacturing Company, 53 Comp. Gen. 838 (1974), 74-1 CPD 240. The reason is that such a procedure clearly would be prejudicial to the other bidders who bid under the invitation and, thereby, have the effect of circumventing the competitive procurement statutes. Pioneer Motor Inn, B-205727, May 17, 1982, 82-1 CPD 467.

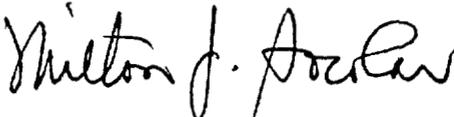
Turning to Garrison's allegation that the Navy knew 8 months prior to issuing the IFB that the boiler of the YFP-14 barge was inoperative, we note that DAR § 2-404.1(a) cautions that every effort be made to anticipate changes in a requirement prior to the date of bid opening and to notify all prospective bidders of any resulting modification or cancellation, thereby permitting bidders to change their bid and preventing the unnecessary exposure of bid prices. Nevertheless, while it is regrettable that the Navy opened bids under the IFB before including a requirement for the overhaul of the barge's boiler, we cannot say from our review of the record that the Navy canceled the IFB in bad faith. Also, it is clear that the boiler is inoperable and the protester does not dispute the Navy's need to have the

boiler repaired in order to make the barge operational. Moreover, the need to have the boiler overhauled was only one of several increased requirements which in the Navy's view necessitated the cancellation of the IFB.

Finally, with regard to the Navy's decision not to resolicit and instead perform the work through its Public Works Center in Guam, we have held that an agency decision to perform work in-house rather than to contract out involves a policy matter which is to be resolved for the most part within the executive branch of the federal government and not by our Office. See Carmel Valley Disposal Service, B-210999, March 22, 1983, 83-1 CPD 295. We will only review the contracting agency's decision in this area when a competitive solicitation has been issued for the purpose of ascertaining the cost of contracting and it is alleged that the cost comparison between performing the work in-house and contracting out is faulty or misleading. Crown Laundry and Dry Cleaners, Inc., B-194505, July 18, 1979, 79-2 CPD 38. While an IFB was issued here, it was not for the purpose of ascertaining the cost of contracting. Rather, the increased maintenance requirements for the YFP-14 barge which necessitated the cancellation of the IFB were also the reason for the Navy's determination to perform such maintenance in-house. Therefore, the limited exception when we will review an agency's decision to perform work in-house is inapplicable in this case.

We deny Garrison's protest in part and dismiss it in part.

There is no legal basis for allowing an unsuccessful bidder to recover damages in the form of anticipated profits. See Trans-Alaska Mechanical Contractors, B-204737, September 29, 1981, 81-2 CPD 268. Also, the costs of pursuing a bid protest are not compensable. Bell and Howell Company, 54 Comp. Gen. 937 (1975), 75-1 CPD 273. In view of our conclusion that Garrison's protest is without merit, any claim it may be making for bid preparation costs is denied. Jets, Inc., B-195617, February 21, 1980, 80-1 CPD 152.

for 
Comptroller General
of the United States