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**DECISION**



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

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**FILE:** B-213005

**DATE:** March 13, 1984

**MATTER OF:** Electric Maintenance & Installation Co.,  
Inc.

**DIGEST:**

1. Where a predicted change in river water level caused revision in the government's delivery schedule with regard to a procurement for removing, cleaning and inspecting motors at a navigation canal lock, cancellation of the solicitation was justified even after bids were opened.
2. Claim for bid preparation costs is denied where cancellation of solicitation was justified.

Electric Maintenance & Installation Co., Inc. (EMI), protests the cancellation of invitation for bids (IFB) No. DACW29-83-B0118, issued by the Department of the Army, Corps of Engineers (Corps), New Orleans District, for renewal, cleaning and inspecting motors at the Inner Harbor Navigation Canal Lock. EMI also protests the Corps' determination that it was nonresponsible and claims bid preparation costs.

We deny the protest and the claim for bid preparation costs.

The IFB was issued by the Corps of Engineers on July 8, 1983, and bids were received and opened on July 22. EMI was the low bidder. On August 15, the contracting officer made a nonresponsibility determination because the information available did not indicate clearly that EMI had adequate financial resources or the ability to obtain them. That same day, because EMI is a small business, the matter of EMI's responsibility was referred to the Small Business Administration (SBA) to decide whether to issue a certificate of competency (COC).

On August 24, while the COC was pending, the contracting officer was informed that river stage predictions showed that on September 5 the Mississippi River would be in a "reverse head" condition, that is, the river would be lower than the canal, and the locks would have to

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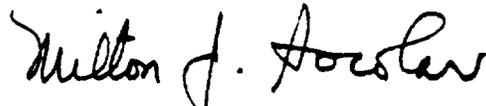
operate to raise and lower water levels in reverse of normal directions. The "reverse head" condition would require the use of two of the five motors that were to be removed-- those needed to operate the "reverse head" gates. Thus, two motors would have to be reinstalled and operational by September 5 to avoid disruption of river navigation. However, the IFB schedule permitted 15 days for removal, cleaning and inspection without allowance for repair, if needed, and reinstallation.

Since the Corps no longer had sufficient time to accomplish the refurbishing by September 5, under the existing IFB schedule, the contracting officer determined that it was necessary to cancel the IFB. SBA was notified that issuance of a COC would no longer be necessary and EMI was notified of the cancellation. On August 26, a contract was awarded on an expedited basis under the small purchase provision of Defense Acquisition Regulation (DAR) section III, part 6 (Defense Acquisition Circular No. 76-17, September 1, 1978), for the removal, cleaning, repair, and reinstallation of the two motors for the reverse head gates by the September 5 deadline. Although EMI was contacted concerning the small purchase procurement, it declined to submit a bid.

The procurement regulations permit cancellation after bid opening when cancellation is in the best interests of the government. DAR § 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 contracting officer must have a cogent and compelling reason for canceling. Powertronic Systems, Inc., B-210283, September 30, 1983, 83-2 CPD 346; NonPublic Educational Services, Inc., B-207751, March 8, 1983, 83-1 CPD 232. As a general rule, changing the requirements of a procurement after the opening of bids to properly express the minimum needs of the government constitutes a compelling reason for the cancellation of a solicitation. Winandy Greenhouse Company Incorporated, B-208876, June 7, 1983, 83-1 CPD 615. Further, it is primarily for an agency to determine what its minimum needs are. We will not question an agency's determination of its minimum needs in the absence of a clear showing that the determination was arbitrary or capricious. Winandy Greenhouse Company Incorporated, supra.

Here, the Army Corps of Engineers had been advised that a change in river water level would require the use of two of the motors involved in the solicitation earlier than the expected time established under the IFB to avoid disruption of river navigation. Because the government's needs had changed, cancellation of the solicitation was proper and the contracting officer did not abuse his discretion. Since cancellation of the solicitation was justified, it is not necessary to consider the propriety of the nonresponsibility determination. Bush-Herrick, Inc., B-209683, June 20, 1983, 83-1 CPD 669.

We also deny EMI's claim for bid preparation costs because the agency did not act arbitrarily in canceling the solicitation. Bush-Herrick, Inc., supra.

*for*   
Comptroller General  
of the United States