

DECISION

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

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FILE: B-213352**DATE:** March 16, 1984**MATTER OF:** Meds Marketing, Inc.**DIGEST:**

Where an invitation for bids does not contain specifications that adequately define the agency's actual needs to permit full and free competition on an equal basis, the agency has a compelling reason for cancellation after bid opening.

Meds Marketing Inc. protests the cancellation of invitation for bids (IFB) No. 573-010-84 issued by the Veterans Administration (VA) for electrocardiographic computer services at the VA Medical Center, Gainesville, Florida. After bid opening, the VA rejected Meds' bid and canceled the IFB based upon its determination that the specifications were materially defective in stating the government's actual needs and therefore inadequate for competitive bidding. Meds contends that the cancellation was improper and requests reinstatement of the IFB. We deny the protest.

The IFB was originally issued on August 26, 1983, with a bid opening date of September 19. The IFB's entire specifications consisted of two brief sentences as follows:

"Computer Services: For two each C-295 Marquette multilead EKG and VCG carts for data acquisition and transmission to IBM 1800 computer. Data received to be analyzed by computer and abnormal EKG's will generate vectorial plat (VCG) and provide new scale EKG analysis of each EKG with printouts of measurements and diagnostic criteria."

Four firms were initially solicited. Additionally, the contracting officer sent Meds a solicitation package on September 14, by express mail, in response to its telephone request of that same day.

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On September 16, the last working day prior to bid opening, Meds sought clarification from the VA concerning a number of aspects of the IFB specifications. Specifically, Meds inquired whether the required equipment (Marquette) was to be government-owned or leased since Meds was uncertain as to whether the specifications required Meds to "provide it." Meds also inquired as to the monthly estimated quantity of electrocardiograms performed at the Medical Center as well as the compatibility of the specified equipment with certain software. While unable to answer all of Meds' inquiries, the contracting officer, after reviewing the specifications, determined that the specifications were inadequate. However, she did not take immediate corrective action because she wanted to discuss the matter with her supervisor who was on leave and unavailable. Meanwhile, Meds turned to the incumbent contractor to secure the technical information it needed concerning software compatibility. At bid opening on September 19 (the next working day after the Meds telephone inquiry), Meds submitted the only timely bid which was hand-carried by its employee to insure timely delivery.

Upon his return on September 26, the contracting officer's supervisor agreed with the contracting officer that the specifications were "totally inadequate." The contracting officer thereafter canceled the solicitation in its entirety. A resolicitation was issued on October 19 which contained detailed technical specifications for the computer services, including an estimate of the government's monthly requirements.

Meds contends that the reasons upon which the VA based its cancellation determination are not sufficiently compelling to warrant cancellation. We disagree.

The Federal Procurement Regulations (FPR) state that after bids have been opened, award must be made to the responsible bidder that submits the lowest responsive bid, unless there is a compelling reason to reject all bids and cancel the invitation. FPR § 1-2.404-1. A number of reasons considered sufficiently compelling to justify cancellation are listed in the FPR, including inadequate or deficient specifications. FPR § 1-2.404-1(b)(1). We consistently have held that the authority vested in a contracting officer to decide whether to cancel a solicitation is extremely broad, and in the absence of a showing of an abuse of discretion, a contracting officer's decision to cancel an IFB will be upheld. 49 Comp. Gen. 584 (1970).

We believe the cancellation was justified because the specifications clearly did not adequately specify the VA's actual needs. In this regard, the terms of a solicitation must be stated clearly and precisely, so that prospective bidders can know what is required and can compete on an equal basis. See Arvol D. Hays Construction Company, B-189440, November 23, 1977, 77-2 CPD 401. Meds' own inquiries prior to bid opening concerning the requirements of the specifications identified material omissions which we think bidders reasonably needed to know to compete on an equal basis and to satisfy the government's requirements. In fact, the specifications are so vague that it is not at all clear what Meds' legal obligation would be if it were awarded a contract under this solicitation. We therefore conclude that the solicitation was obviously and materially defective because the agency's requirements were inadequately defined in the IFB. Indeed, we believe that the solicitation was so materially defective that cancellation was mandatory. See Go Leasing, Inc.; Sierra Pacific Airlines, B-209202; B-209202.2, April 14, 1983, 83-1 CPD 405.

Meds argues, however, that the contracting officer, having determined the specifications to be defective prior to bid opening, should have canceled the solicitation at that time, thereby saving Meds the expense of its courier. We have previously held that a procuring agency is not precluded from canceling an invitation after bid opening simply because, prior to the opening, it failed, as here, to correct an IFB deficiency. See Uni-Con Floors, Inc., B-193016, April 19, 1979, 79-1 CPD 278. Thus, we cannot conclude that the VA was precluded from reassessing the adequacy of the specifications after bid opening.

Meds also argues that these same specifications were used by the VA for the past 7 years. In response, the VA states that while this requirement has been procured with these specifications on a sole-source basis for 6 of the past 7 years, it does not consider the specifications adequate for competitive bidding.

Although an award may be made under an inadequate solicitation if the actual needs of the government would be served and the rights of others would not be prejudiced, see Ingersoll-Rand Company, B-192279, October 6, 1978, 78-2 CPD 258; Isometrics, Inc., B-192151, September 13, 1978, 78-2 CPD 198, an award would be inappropriate here. In view of the material deficiencies of the solicitation, we do not think that the agency is precluded from taking necessary

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corrective action to assure full and free competition simply because the same specifications have been used in the past.

Finally, Meds argues that, as a small business in a labor surplus area, it should have been given special consideration. Further, Meds alleges, without any substantiation, that the VA's cancellation constituted "conflict of interest" and "discrimination" against Meds. In view of our holding that the VA's cancellation was proper and required, we will not consider these allegations since no award to Meds or to any other offeror could have been made under the solicitation in any event.

The protest is denied.



Acting Comptroller General
of the United States