

**DECISION**



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

**FILE:** B-213068

**DATE:** April 23, 1984

**MATTER OF:** The Rhodes Company, Inc.

**DIGEST:**

Determination to cancel invitation prior to bid opening is a matter of contracting agency discretion which will not be disturbed by GAO absent clear proof of abuse of discretion. Where cancellation was based on substantial changes in requirements which occurred after issuance of invitation, there was no abuse of discretion.

The Rhodes Company, Inc. (Rhodes), protests the cancellation of United States Geological Survey invitation for bids (IFB) No. 3092. The IFB--for a marine water chilling plant for the vessel "Polaris"--was canceled prior to bid opening because the vessel had been "reconfigured" after the IFB was issued, thereby making the originally requested plant too small in capacity and too large in physical size for the vessel. The revisions to the specifications that were consequently required were felt to be other than minor and, thus, it was necessary to cancel, rather than amend, the invitation.

We deny the protest.

Rhodes states that it learned while installing other equipment on the "Polaris" that a marine water chilling plant was needed for the vessel. In view of its presence on the vessel, Rhodes was thus able to measure the area where the plant was to be installed, and these measurements, along with other necessary data, were then furnished to the Rhodes supplier for this type of plant so that a satisfactory plant could be developed. The resultant specifications were furnished to the using activity, presumably to assist in the agency's formulation of what it would actually purchase. In view of the considerable expenditures in effort and money in developing these specifications on the part of Rhodes and its supplier, Rhodes feels the agency was highly unjustified in canceling the IFB.

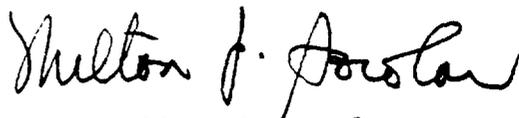
Rhodes states that its plant will fit into the area on the vessel where the plant will be installed and will provide the necessary capacity. It also contends that the reason given for the cancellation is fallacious and that the real reason is the incorrect belief that the agency specifications were based upon the plant developed by Rhodes and its supplier and were, therefore, restrictive of competition. For instance, one potential bidder raised the possibility that the requirement in the specifications calling for "spring-loaded safety heads" could be met only by the plant manufactured by the Rhodes supplier. No proof of this allegation was ever offered, Rhodes states, and, instead, that potential bidder declined to bid because it could not comply with the required delivery schedule.

We have held that the determination of whether a cogent reason exists for the cancellation of an invitation is a matter primarily within the discretion of the contracting agency; therefore, the determination will not be disturbed by our Office absent clear proof of an abuse of this discretion. MICA, Inc., B-200735, June 22, 1981, 81-1 CPD 513.

The protester has the burden of affirmatively proving its case. Dynalectron Corporation, B-199741, July 31, 1981, 81-2 70. The protester has not met this burden concerning its allegation that the invitation was canceled because of the alleged restrictive character of the specification rather than bona fide changes in the needs of the agency.

As to the changes in the agency's needs which prompted the cancellation, we understand that the "reconfiguration" of the vessel involved two changes. The first change involved the addition of equipment to the engine room which caused a need for a dimensionally smaller chilling plant. At the same time, the agency planned an increase in the size of the living quarters section of the vessel, thus causing an increase in needed capacity of the chilling plant. We find no basis to question the cancellation, given these substantial changes in needs.

Accordingly, the protest is denied.

*for*   
Comptroller General  
of the United States