

DECISION

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

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FILE: B-216331.2 **DATE:** February 7, 1985
MATTER OF: Alternative House--Reconsideration

DIGEST:

Agency request that GAO recommendation that canceled RFP be reinstated and award made under that RFP be modified to allow agency to make an award under a new RFP issued for the same requirement is denied since agency has not shown that reinstatement of canceled RFP is not feasible or that a fair price under the earlier competition would not be obtained.

The Department of Justice, Bureau of Prisons, requests reconsideration of our decision in Alternative House, B-216331, Dec. 7, 1984, 84-2 C.P.D. ¶ _____. In that case, we found the Bureau's cancellation of request for proposals (RFP) No. 276-053 lacked a sound basis and recommended that the RFP be reinstated and an award made under that solicitation.

The Bureau does not dispute our conclusion that the cancellation of RFP No. 276-053 was improper. The Bureau argues, however, that since a new solicitation for the same services has been issued, it would be in the best interests of all concerned to make an award under the new RFP rather than reinstate the one which was canceled. The Bureau notes that of the three original offerors, only two remain interested in the canceled RFP and both (including Alternative House) have also submitted proposals under the new RFP. The Bureau argues that the loss of the remaining original offeror would severely limit competition and contends that the additional offer generated by the new RFP is not prejudicial since the number of competitors for award remains at three.

We find the Bureau's arguments unpersuasive and decline to withdraw our recommendation. As noted in our previous decision, there is no significant difference between the new RFP and the RFP which the

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Bureau canceled. Although the Bureau has suggested that the present RFP more accurately reflects the government's requirements, no evidence has been submitted which demonstrates that our previous finding was in error. Where as here, no reasonable basis exists for canceling the original RFP and a new RFP is issued for the same requirements, consideration of offerors which had an opportunity to submit a proposal for the original RFP and did not do so, is, in effect, allowing the submission of proposals which would otherwise be late and not for consideration. With respect to the Bureau's contention that competition would be inadequate if the canceled RFP were reinstated, we note that the Bureau did not argue this as justification for canceling the earlier RFP, and two firms remain in the competition. Furthermore, we must also consider the seriousness of the procurement deficiency and the harm to the integrity of the competitive system which results from letting an unreasonable agency decision stand. In our view, the Bureau has not provided us with a sufficient basis to conclude that the implementation of our previous recommendation is not feasible or that a fair price under the earlier competition would not be obtained. Accordingly, our prior decision is affirmed.

Finally, we note that to the extent the original offerors have revised their proposals in response to the new RFP, nothing in our previous decision prohibits the Bureau from conducting discussions and requesting best and final offers prior to making an award under the original RFP.

This decision contains a recommendation for corrective action to be taken. Therefore, we are furnishing copies to the Senate Committees on Governmental Affairs and Appropriations and the House Committees on Government Operations and Appropriations in accordance with section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. § 720 (1982), which requires the submission of written statements by the agency to the committees concerning the action taken with respect to our recommendation.

for 
Comptroller General
of the United States