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DECISION

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

FILE: B-216607 **DATE:** March 1, 1985

MATTER OF: Magnolia Inn

DIGEST:

1. Protest, alleging that IFB was improperly canceled, filed 1 day after telephonic notice that the contracting officer intended to cancel the IFB and several days before protester received written notice of reasons for cancellation, is timely.

2. Contracting officer may properly cancel a solicitation after bid opening when it is evident that the solicitation does not reflect the minimum needs of the government.

3. IFB to provide meals and lodging to Army recruits may properly restrict offers to firms within one-mile radius of processing station and is not unduly restrictive where the restriction reflects the actual needs of the Army.

Magnolia Inn (Magnolia), protests the cancellation after bid opening of invitation for bids (IFB) No. DACA03-84-B-0003, issued by the Department of Army (Army). The canceled solicitation was a small business set-aside to furnish meals and lodging for recruits being processed through the Military Entrance Processing Station (MEPS) in Little Rock, Arkansas.

For the reasons discussed below, we deny the protest.

Bid opening was August 9, 1984, and Magnolia was the apparent low bidder. The contracting officer determined that Magnolia was a responsible bidder for purposes of this solicitation. However, prior to award, the contracting officer was advised by MEPS that its needs had changed and the solicitation specifications were now inadequate. Consequently, the contracting officer decided to cancel the solicitation and issue a new solicitation incorporating the

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present needs of MEPS. Magnolia received telephonic notification on September 27, 1984, that the contracting officer intended to cancel the solicitation and resolicit bids from hotels/motels within a one-mile radius of MEPS instead of within the "15-minute drive" permitted under the IFB. Magnolia filed its protest in our Office on September 28, 1984. A written cancellation of the IFB was issued on October 1 to all bidders, including Magnolia. This letter stated the reasons for the cancellation of the IFB. In its report to our Office responding to the protest, the Army further elaborated upon its rationale for cancellation.

The Army first contends that Magnolia did not protest in a timely manner because Magnolia did not provide an adequate statement of protest amounting to a "challenge" of the contracting officer's decision until the firm submitted its comments on the agency report. We disagree.

Under our Bid Protest Procedures, Magnolia had 10 working days to file a protest from the date the basis of protest was known or should have been known. 4 C.F.R. § 21.2(b)(2) (1984). The record before us does not clearly indicate that Magnolia knew or should have known the specific reasons for cancellation prior to receipt of the Army's October 1, 1984 letter. In any event, Magnolia filed its initial protest letter just 1 day after it was notified by telephone of the impending cancellation. Although the initial protest letter did not deal with the reasons later provided by the Army in support of its decision to cancel, it did serve notice that Magnolia was dissatisfied with the contracting officer's decision to cancel and resolicit within a restricted geographical area. Consequently, we consider the protest to be timely filed under our Bid Protest Procedures. We now turn to the merits of the case.

The crux of Magnolia's protest is that the contracting officer did not have proper grounds for canceling the solicitation since the stated reasons for cancellation existed before bid opening and were fully considered by the contracting officer. Magnolia questions that cancellation was "due to a change in the requirements of MEPS," the grounds cited by the Army for cancellation of the procurement. It asserts, therefore, that the contracting officer's decision was arbitrary and capricious and should not be sustained.

It is undisputed that contracting agencies have broad discretion in determining when it is appropriate to cancel a solicitation. Seaward International, Inc., B-199040, Jan. 16, 1981, 81-1 C.P.D. ¶ 23. However, when formal advertising procedures are used and bids have been opened, cancellation can have an adverse effect on the competitive bidding system. For that reason, we have often held that in exercising their discretion, contracting officers must have cogent and compelling reasons that warrant cancellation. Engineering Research Inc., 56 Comp. Gen. 364 (1977), 77-1 C.P.D. ¶ 106. The determination as to whether such a reason exists is an administrative one that will not be disturbed unless the protester can demonstrate that the decision was arbitrary, capricious or not supported by substantial evidence. McGregor Printing Corp., B-207084, B-207377, Sept. 20, 1982, 82-2 C.P.D. ¶ 240.

In this case, the record establishes that the Army had a compelling reason to cancel the solicitation. In a September 25, 1984 letter to the contracting officer, MEPS advised that a change in its processing schedules required that recruits be lodged within walking distance--i.e., a quarter-of-a-mile or less--or within a one-mile radius of the MEPS location if transportation was provided. MEPS expressed concern that any lodging outside this one-mile limitation could adversely affect the processing schedules for the recruits as inclement weather or transportation difficulties could unduly delay the time of arrival at MEPS. Moreover, MEPS stated that it lost funding for a bus and driver which was available as back-up transportation if the need arose. In view of these facts, the contracting officer determined that the pending solicitation did not adequately reflect the agency's minimum needs. Therefore, pursuant to the Federal Acquisition Regulation, 48 C.F.R. § 14.404-1(c)(2) (1984), the contracting officer issued a written determination to cancel the solicitation because the specifications would be revised to reflect the present minimum needs of the Army.

Although Magnolia has submitted data to our Office to show that Little Rock usually has mild winters and, therefore, MEPS' concerns about weather caused delays were not well founded, in view of the reported lack of snow removal equipment in Little Rock we do not believe the protester has shown that the Army acted arbitrarily.

Magnolia further contends that the new geographical requirement is unduly restrictive and should be disallowed. However, we have consistently held that specifications are not unduly restrictive if they express the legitimate minimum needs of the government. A&M School Bus Service, B-208833, Dec. 22, 1982, 82-2 C.P.D. ¶ 566. Moreover, 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. A&M School Bus Service, B-208833, supra. Magnolia has not shown this new geographical restriction to be unreasonable.

Finally, Magnolia alleges that acceptance of its proposal would result in monetary savings to the government. Our Office has taken the position, however, that the test for cancellation of an IFB after bid opening is whether the procurement will satisfy the actual minimum needs of the government. Commercial Envelope Manufacturing Company, Inc., B-213272, Feb. 15, 1984, 84-1 C.P.D. ¶ 206. Therefore, the propriety of the cancellation does not hinge upon whether the proposal would yield monetary savings to the government.

The protest is denied.

for Harry R. Van Cleve
General Counsel