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DECISION

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

FILE: B-218029 **DATE:** March 27, 1985

MATTER OF: M & M Services, Inc.

DIGEST:

1. Where, after bid opening, agency discovers that invitation contains conflicting estimates for taxi service calls, and application of the invitation order of precedence clause results in precedence being given to erroneous estimate which does not reflect the agency's actual anticipated needs, the agency acted reasonably by canceling the invitation.

2. Claim for bid preparation costs is denied where claimant has not shown that the agency abused its discretion in canceling solicitation.

M & M Services, Inc. (M & M), a small business, protests the Naval Facilities Engineering Command (Navy) decision to cancel after bid opening invitation for bids (IFB) No. N62477-83-B-5410.

We deny the protest.

The IFB solicited bids for transportation and maintenance services for the Naval Weapons Centers at White Oak, Maryland and Dahlgren, Virginia. The Navy decided to cancel the solicitation after discovering that it contained conflicting estimates for some transportation services and omitted estimates for other services. For instance, the IFB schedule of deductions (schedule) estimates a total of 6,050 annual taxi service calls for the two sites while the "general requirements" section of the IFB estimates 6,050 monthly calls. Additionally, the "general requirements" section indicates that on-site freight taxi and tow truck services are contemplated; however, the schedule fails to include estimates for these services.

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M & M, the low bidder, argues that any conflict in solicitation provisions should have been resolved by application of the IFB order of precedence clause which gives the schedule precedence over all other solicitation provisions. M & M thus argues that award should have been made to that firm on the basis of the estimates contained in the schedule and that cancellation of the solicitation was improper.

Subsection (a)(1) of Federal Acquisition Regulation (FAR) § 14.404-1, 48 C.F.R. § 14.404-1(a)(1) (1984), provides that after bids have been opened award must be made to the low responsive, responsible bidder, "unless there is a compelling reason to reject all bids and cancel the invitation." Subsection (c)(1) further states that invitations for bids may be canceled after opening but prior to award when such action is consistent with (a)(1) above, and the contracting officer determines in writing that inadequate or ambiguous specifications were cited in the invitation.

Here, the Navy canceled the IFB after determining that the inclusion of different estimates for the same work created ambiguities. M & M argues that the cancellation was improper because the IFB order of precedence clause resolves any conflicts by giving precedence to the estimates contained in the schedule. However, the Navy points out that the estimates contained in the schedule do not reflect the agency's actual anticipated needs. For instance, while application of the order of precedence clause results in precedence being given to the schedule estimate of 6,050 annual taxi service calls, the number of taxi service calls actually anticipated for this procurement is 6,050 monthly or 72,600 annual calls. Thus, if the order of precedence clause is applied to resolve the ambiguity, an erroneous estimate is controlling. In this regard, the Navy points out (and the protester does not dispute) that the firm's bid merely accounts for 6,050 annual taxi service calls which would not meet the agency's anticipated needs. Additionally, since the schedule omitted estimates for on-site freight taxi and tow truck services, award based on the schedule estimates would not account for these services. Under such circumstances, where award on the basis of the schedule estimates would not result in the Navy's meeting its anticipated needs, the Navy acted reasonably by not

invoking the order of precedence clause and canceling the solicitation. Central Mechanical, Inc., B-206030, supra; cf, Bristol Electronics, Inc., B-191449, Aug. 4, 1978, 78-2 C.P.D. ¶ 88.

M & M also argues that it is entitled to bid preparation costs because of the Navy's alleged bad faith or negligence in failing to recognize the defects in the solicitation and to promptly cancel the solicitation. M & M points out that after the Navy determined M & M nonresponsible, it referred the issue of M & M's responsibility to the Small Business Administration (SBA) for possible issuance of a Certificate of Competency (COC). During the COC proceeding, M & M advised the Navy of its belief that the IFB contained conflicting estimates. The Navy responded that it would request M & M to identify the specific conflicts, but a COC was issued prior to the Navy's written request for M & M to identify specific solicitation defects. It is clear from the record that after M & M identified the problems with the solicitation, the Navy disagreed with M & [illegible] the solicitation was defective and, based on this initial view, the COC proceeding and appeals continued. The Navy now concedes that its position was incorrect.

A prerequisite to entitlement to bid preparation costs as a result of cancellation of a solicitation is a showing that the government acted arbitrarily or capriciously with respect to the claimant's bid or proposal. Chrysler Corp., B-206943, Sept. 24, 1982, 82-2 C.P.D. ¶ 271. Here, we have concluded that cancellation constituted a reasonable exercise of discretion by the Navy. Further, a lack of diligence on the part of the Navy in recognizing the defects even after the protester's assertions to the Navy that a problem existed, in our view, does not rise to the level of arbitrary or capricious action which gives rise to the recovery of bid preparation costs. Chrysler Corp., B-206943, supra.

We deny the protest and claim for bid preparation costs.

for Seymour Efros
Harry R. Van Cleve
General Counsel