

**DECISION**



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

**FILE:** B-222045

**DATE:** May 13, 1986

**MATTER OF:** W.H. Smith Hardware Co.

**DIGEST:**

Agency which terminated contract after discovering that solicitation understated its requirements and that awardee's product would not meet its needs should reinstate the solicitation and make award to the protester since protester's offer will meet the agency's actual needs and was the lowest technically acceptable offer under the original solicitation.

W.H. Smith Hardware Company protests the actions of the Defense Construction Supply Center (DCSC) under solicitation No. DLA700-86-R-0285 for lavatory faucets. Smith originally protested the rejection of its offer as unacceptable and the award of a contract to State Plumbing and Heating Systems, Inc. Before the resolution of the protest, DCSC terminated the contract with State on the ground that the solicitation did not set forth all of the agency's needs. It proposes to resolicit the requirement. Smith now contends that DCSC should reinstate the original solicitation and award it a contract because its original offer meets all the agency's needs.

We sustain the protest.

The solicitation, as amended, contained a National Stock Number and a short description of the item. It also listed three manufacturers and their approved part numbers. DCSC received nine offers in response to the solicitation, including two from State. Both the low (submitted by State) and the second low offer (submitted by Sunbury Supply Company) were rejected as technically unacceptable because the faucets offered contained a knob style control rather than the specified lever control. The third low offer (submitted by Smith) was also rejected as technically unacceptable because the item offered was thought to contain a plastic valve body, leaving State's

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alternate offer as the lowest acceptable offer. A contract was awarded to State on January 27, 1986.

After receiving Smith's protest, DCSC reevaluated the protester's offer and found it to be technically acceptable. The agency also discovered that the item description in the solicitation had omitted any reference to male adapters that were required by the agency. DCSC also found that two of the three approved manufacturers' part numbers listed in the solicitation as acceptable were in fact unacceptable because they did not include the male adapters. DCSC terminated State's contract because the item which State offered did not include the male adapters. The agency proposes to resolicit the requirement with a revised item description.

Smith argues that DCSC should reopen the solicitation and award it the contract based on its original offer because that offer was the lowest which proposed a product which contained the required male adapters.

While the procurement regulations provide no specific direction or guidance regarding how procuring agencies should proceed after a contract termination such as the one involved here, we think that the agency's determination either to resolicit the requirement or, if practicable, to make award under the prior solicitation must be reasonably supported. See Koehring Co., Speedstar Division, B-219667.2, Feb. 6, 1986, 65 Comp. Gen. \_\_\_\_, 86-1 CPD ¶ 135.

Here, the record shows that the item offered by Smith does include the required male adapters and that Smith has indeed submitted the low offer which meets the agency's actual needs. Smith's offer is also lower than the State alternate offer which resulted in the initial award. The lower offers submitted by Sunbury and State were rejected for reasons unrelated to the defect in the solicitation concerning the male adapters and therefore would presumably be unacceptable under the proposed resolicitation.

The agency proposes to resolicit the requirement because the solicitation's item description was defective in that it did not specify that the faucets to be supplied must include a male adapter. We note, however, that Smith's low offer appears to meet the agency's needs. Further, since the solicitation understated rather than overstated the agency's needs, the other offerors would not be prejudiced by an award to Smith based on its low offer. Consequently, we do not believe that any useful purpose would be

served by resoliciting the requirement rather than awarding a contract to Smith based on its offer under the original solicitation, assuming, of course, that the offer is otherwise acceptable and that Smith is responsible. See Hemford Co., B-216811, Feb. 8, 1985, 85-1 CPD ¶ 167. We are by letter of today making such a recommendation to the contracting agency.

The protest is sustained.

*for*   
Comptroller General  
of the United States