

**DECISION**



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

**FILE:** B-220087.3

**DATE:** June 19, 1986

**MATTER OF:** American Television Systems

**DIGEST:**

Contracting agency properly canceled invitation for bids (IFB) for design and installation of a local area network where agency's needs have changed to require more extensive system than described in IFB. Since the procurement is principally for design of an integrated system, the changes necessary to meet agency's expanded needs are not the equivalent of an additional quantity under a solicitation for a supply of items. The agency's new requirements thus cannot properly be the subject of a separate solicitation. Award cannot be made under the original IFB with the intention of modifying the contract to accommodate the new requirements.

American Television Systems (ATS) protests the cancellation of invitation for bids (IFB) No. N00024-85-B-6408 issued by the Navy for the design and installation of a local area network (LAN). The protester maintains that the Navy lacked a compelling reason to cancel the IFB. We deny the protest.

The basic portion of the IFB was for the design of a LAN, a broad-band cable system linking various data processing equipment belonging to the Naval Sea Systems Command (NAVSEA) and the Naval Air Systems Command (NAVAIR) at their Crystal City building complex in Arlington, Virginia. The IFB also included option items for materials and supplies for installation of the system. In an earlier protest, we held that the procurement was for automatic data processing (ADP) equipment within the meaning of the Brooks Act, 40 U.S.C. § 759 (1982), and the Federal Information Resources Management Regulation (FIRM), 41 C.F.R. § 201-2.001 (1985). Since the Navy had not obtained a delegation of procurement authority (DPA) from the

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General Services Administration (GSA) as required by the Brooks Act and the FIRM, we held that the Navy was without authority to conduct the procurement. Accordingly, we recommended that the Navy apply for a DPA from GSA, recognizing that compliance with the Brooks Act and the FIRM might require revising the IFB. See Plus Pendetur Corp., et al., B-220087 et al., Jan. 30, 1986, 65 Comp. Gen. \_\_\_\_\_, 86-1 CPD ¶ 107.

By letter dated March 28, 1986, the contracting officer advised ATS, the apparent awardee under the IFB, that the IFB had been canceled. The contracting officer relied on two principal factors to support the decision to cancel: (1) the Navy's needs had changed so that a more extensive system than called for under the IFB was required; and (2) additional procurement planning efforts and revisions to the IFB were required to comply with the Brooks Act and the FIRM. In addition, as a result of the Navy's determination that the IFB no longer met its minimum needs, the funds originally available for the procurement were reprogrammed to other Navy projects. The Navy now intends to acquire the design portion of the requirement under an existing services contract and subsequently conduct a new procurement for the LAN equipment and installation.

Because of the potential adverse impact on the competitive bidding system, an IFB may be canceled after bid prices have been exposed only where there is a compelling reason for the cancellation. Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.404-1(a)(1) (1984); Dyneteria, Inc., B-211525.2, Oct. 31, 1984, 84-2 CPD ¶ 484. Changing the requirements of a procurement after bid opening to express properly the contracting agency's minimum needs generally constitutes a compelling reason for cancellation. Arcwel Corp., B-221380, Mar. 18, 1986, 86-1 CPD ¶ 269. Here, we find that the Navy's need for a different, more extensive LAN was a compelling reason for canceling the IFB.

The IFB called for a LAN linking two Navy commands, NAVAIR and NAVSEA, in their Crystal City building complex. According to the Navy, in December 1985 (after the IFB was issued in August), the Naval Data Automation Command, the command responsible for acquisition of ADP resources for the Navy, determined that any LAN in the Crystal City area should be developed together with all the Navy commands located in that area, not just NAVAIR and NAVSEA. In addition, the Navy states that since the IFB was issued, there have been relocations of Navy personnel and equipment in the Crystal City area which would affect the design of

the LAN. As a result, the contracting officer concluded that cancellation of the IFB was appropriate because the LAN described in the IFB no longer represented the Navy's minimum needs.<sup>1/</sup>

ATS concedes that the Navy's current actual needs require expansion of the system specified in the original IFB. ATS argues, however, that the design called for under the IFB can be modified to accommodate the expansion. According to ATS, the required changes should be regarded merely as an additional quantity of items already called for under the IFB. Thus, ATS argues, instead of canceling the IFB, the Navy should either issue a separate solicitation for the additional requirements as contemplated by FAR, 48 C.F.R. § 14.404-1(a)(3), or, after award is made under the IFB, modify the contract to accommodate the additional requirements. We disagree.

The FAR provision relied on by ATS, section 14.404-1(a)(3), states that an IFB generally should not be canceled due solely to increased requirements for the items being acquired; instead, award should be made under the original IFB and the additional quantity acquired under a new procurement. This provision, however, applies only where an agency is acquiring a supply of items, not where the procurement is for services needed to perform specific work. Feinstein Construction, Inc., B-218317, June 6, 1985, 85-1 CPD ¶ 648. Beyond stating that the design called for by the IFB could be expanded to meet the Navy's current needs, ATS offers no evidence to show that the expanded requirements are suitable for procurement separate from the basic system described in the original IFB. On the contrary, while the IFB contains option items for materials and supplies, the primary portion is for design and installation of an integrated system. Further, a contracting agency may not, as ATS suggests, award a contract competed under given

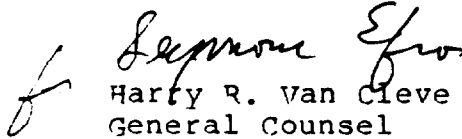
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<sup>1/</sup> Section 14.404-1(c) of the FAR, 48 C.F.R. § 14.404-1(c), authorizes the head of the contracting agency to determine if an IFB should be canceled after bid opening. Under section 14.404-1(c) of the Department of Defense FAR Supplement (DFAR), this authority is delegated to the contracting officer. ATS contends that the delegation of authority in the DFAR is without effect because the provision was not published in the Federal Register as required by 41 U.S.C. § 418b (Supp. II 1984). In fact, the DFAR provision was published for public comment in the Federal Register on April 4, 1985. See 50 Fed. Reg. 13,353 (1985).

specifications with the intention of significantly modifying its terms after award. Intercomp Co., B-213059, May 22, 1984, 84-1 CPD ¶ 540.

Since we find that the change in the Navy's minimum needs was a sufficient basis for canceling the IFB, we need not consider whether the other grounds relied on by the Navy also provided a proper basis for cancellation. NDT-1, Inc., B-220570, Nov. 20, 1985, 85-2 CPD ¶ 576.

The protest is denied.

  
Harry R. Van Cleave  
General Counsel