



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** Technology Dynamics, Inc.  
**File:** B-225386  
**Date:** December 11, 1986

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### **DIGEST**

1. Agency's decision to cancel request for proposals was reasonable where solicitation technical data package referenced drawings which were available only to one source, thus restricting competition, other significant drawings were omitted from the solicitation and several drawings included in the package lacked necessary performance requirements.
2. Protest that resolicitation will be noncompetitive is premature where revised solicitation has not been issued.
3. Claim for proposal preparation costs is denied where protest against cancellation of solicitation is denied.

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### **DECISION**

Technology Dynamics, Inc. (TDI), protests the cancellation of request for proposals (RFP) No. DAAH01-86-R-0232 issued by the Department of the Army (Army). We deny the protest in part and dismiss it in part. We also deny TDI's claim for proposal preparation costs.

The solicitation was issued on April 30, 1986, on an unrestricted basis and called for 47 electronic power supplies for a missile system. The RFP provided that the items were to be built in accordance with a technical data package which referenced drawings required to build the power supplies. After the solicitation was issued, two firms complained to the contracting officer that certain components of the solicited item were restricted to the missile system's prime contractor, Hughes Aircraft Company (Hughes), and that Hughes refused to sell these components to other firms. The contracting officer referred this matter to the requiring activity. Based on the requiring activity's review of the

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technical data package, the contracting officer issued an amendment to the solicitation which advised offerors that all but two drawings referenced in the technical data package were adequate for competition and provided offerors with revised versions of the two source restricted drawings based on government specifications.

The RFP established July 30, 1986, as the closing date for receipt of initial offers. After evaluation of initial offers, the Army conducted discussions with offerors. The Army then requested best and final offers by August 18. The Army again advised offerors, prior to the submission of best and final offers, that the technical data package contained no source restricted drawings.

The record indicates that during its review of the proposed contract, the Army Awards Board recommended that a list of all drawings comprising the item be incorporated into the contract. The Army's review of this list indicated that the technical data package referenced additional drawings which were restricted to Hughes. The contracting officer called Hughes and verified that Hughes refused to sell the restricted components to anyone other than the government. On September 22, 1986, the contracting officer issued an amendment cancelling the RFP because certain components were restricted to Hughes. The Army also reports that a subsequent technical review of the RFP showed that major assembly drawings required use of subassembly drawings which inadvertently had been omitted from the RFP and that two other drawings referenced in the RFP did not contain necessary performance requirements.

TDI objects to the cancellation because it contends that it has the design and technical capability to manufacture the source restricted component and ultimately the required power supply. TDI further states that the drawing defects should have been discovered earlier rather than after best and final offers were submitted. Finally, TDI argues that the Army's cancellation of this competitive RFP indicates that the Army intends to make a noncompetitive award to Hughes for this requirement.

The Army acknowledges that its initial conclusion that the technical data package permitted competition was erroneous, but asserts that cancellation was nonetheless justified since several of the drawings subsequently were found to be restricted to one source, and that other defects were later found in the technical data package. The Army further advises that it currently is reviewing and revising the technical data package.

In a negotiated procurement, the contracting officer has broad discretion in deciding whether to cancel a solicitation. Moreover, the contracting officer need only have a reasonable basis to do so, as opposed to the cogent and compelling reason required for cancellation of a solicitation after sealed bids have been opened. Dohrman Machine Production, Inc., B-223307, Aug. 25, 1986, 86-2 C.P.D. ¶ 221. We have recognized that a solicitation may be canceled where the record shows that the solicitation specifications may restrict competition or are otherwise deficient. See Cadre Technical, Inc. et al., B-221430, et al., Mar. 14, 1986, 86-1 C.P.D. ¶ 256; Norfolk Shipbuilding and Drydock Corp., B-219988.3, Dec. 16, 1985, 85-1 C.P.D. ¶ 667; Marmac Industries, Inc., B-203377.5, Jan. 8, 1982, 82-1 C.P.D. ¶ 22.

In our view, the decision to cancel was reasonable. The Army concluded that the technical data package was deficient and the drawings were inadequate for full and open competition. The record shows that the specifications required use of drawings for the manufacture of certain components which were source controlled, that is, could only be procured from the system's prime contractor, and that the prime contractor refused to sell these items to other potential offerors. The record indicates that a firm could not perform the contract without the drawings and supports the Army's finding that competition could not be obtained with the existing technical data package.

Also, the solicitation was defective because certain drawings had been omitted from the amended RFP and other drawings did not contain necessary performance requirements. It is clear that these specification defects precluded competition and created uncertainty whether any potential offeror (other than Hughes) could manufacture the solicited product.

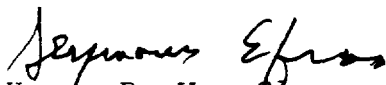
TDI disagrees with the Army's decision to cancel the RFP, but it provides no evidence that the solicitation defects do not provide a reasonable basis for cancellation. While TDI asks for the opportunity to prove it could manufacture the item, including the source controlled component, we find that under the circumstances here the Army reasonably could conclude that no award could properly be made under this RFP because adequate drawings were unavailable to potential offerors.

Further, with regard to TDI's contention that it is improper for the Army to cancel the RFP on the basis of information discovered after submission of best and final offers, we have held that an agency properly may determine to cancel a solicitation no matter when information justifying the

cancellation first surfaces. See Norfolk Shipbuilding and Drydock Corp., B-219988.3, supra. Thus, the Army properly could determine that cancellation on the above grounds was warranted even if the agency mistakenly had initially determined that the specifications were adequate. Chrysler Corp., B-208943, Sept. 24, 1982, 82-2 C.P.D. ¶ 271. While this decision apparently was based on information concerning the drawings which arguably should have and could have been discovered at an earlier date had the agency been more diligent, there is no indication the Army acted in bad faith.

TDI also complains that because Hughes will not sell its components or make available the source drawings to other potential offerors, cancellation of this solicitation allows Hughes to perpetuate a situation which will compel the Army to make a noncompetitive award to Hughes for this requirement. Essentially, TDI anticipates that the Army will make a noncompetitive award to Hughes for this item. The Army has reported that it is reviewing the specifications and has not, to date, issued a revised solicitation. Until such time as the agency has formulated its procurement plans, in our view, a protest against a possible noncompetitive award is premature. Norfolk Shipbuilding and Drydock Corp., B-219988.3, supra; Science Information Services, Inc., B-205899, June 2, 1982, 82-1 C.P.D. ¶ 250. We dismiss this aspect of TDI's protest.

TDI requests proposal preparation costs. In view of our decision denying in part and dismissing in part, TDI's protest, its claim for these costs is denied. Norfolk Shipbuilding and Drydock Corp., B-219988.3, supra.

*for*   
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General Counsel