



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Instrument & Controls Service Company
File: B-231934
Date: October 12, 1988

DIGEST

Compelling reason exists for cancellation of invitation for bids after opening where agency determines that solicitation requirement for specially designed system should be changed to an "off-the-shelf" system to meet its minimum needs.

DECISION

Instrument & Controls Service Company (I&C) protests the cancellation, after bid opening, of invitation for bids (IFB) No. N62472-83-B-0015, issued by the Department of the Navy for an energy monitoring and control system at the Naval Air Engineering Center, Lakehurst, New Jersey. I&C protests that the agency lacked a compelling reason for cancellation and that the cancellation was procedurally deficient.

We deny the protest.

The IFB sought a computerized energy monitoring and control system. The successful bidder would be required to design and install a complete system consisting of single building microprocessor controllers, software, sensors, meters, wiring and interfaces. The work also involved asbestos removal and replacement of steam piping, valves and fittings.

Of the 4 bids received by the Navy, I&C was found to be the low, responsive bidder. During bid evaluation, however, the Navy concluded that the IFB specifications for hardware design and software development did not express the Navy's minimum needs. The Navy determined that the IFB specifications did not restrict bidders to experienced sources or provide that only "off-the-shelf" single building microprocessor controllers (SBC) with demonstrated

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performance in heating, ventilation and air conditioning (HVAC) would be acceptable. Furthermore, the Navy found that the IFB specifications required software development beyond that normally required by SBC configured specifically for HVAC systems. The Navy cancelled the IFB on the basis of their need to revise the IFB specifications.

I&C argues that cancellation of the IFB is improper because the IFB, as issued, would satisfy the government's actual needs. I&C contends that the agency's desire to purchase a commercial unit is irrelevant to the propriety of the cancellation determination because both an "off-the-shelf" product and a specially designed item would meet the Navy's actual needs.

Although a contracting officer has broad discretion to cancel an IFB, there must be a compelling reason to do so after bid opening because of the potential adverse impact of cancellation on the competitive bidding system after bid prices have been exposed. See Federal Acquisition Regulation (FAR) § 14.404-1(a)(1) (FAC 84-5). As a general rule, the need to change requirements after bid opening to express properly the agency's minimum needs constitutes such a compelling reason. Aero-Executive Helicopters, B-227133, Aug. 17, 1987, 87-2 CPD ¶ 167. Our Office generally regards cancellation after opening of bids to be appropriate when an award under the solicitation would not serve the actual minimum needs of the government or when other bidders would be prejudiced by such an award. United States Elevator Corp., B-225625, Apr. 13, 1987, 87-1 CPD ¶ 401. Our review is limited to considering the reasonableness of the contracting officer's discretion. Motorola, Inc., et al., B-221391.2, et al., May 20, 1986, 86-1 CPD ¶ 471.

We find that the record establishes a compelling reason to cancel the IFB. The Navy intends to change the solicitation requirements from a specially designed system to an "off-the-shelf," commercial SBC, with proven software. The Navy's concern is with the risks associated with hardware and software development. Because of the software development required and the fact that the system has not been tested or used, the Navy is concerned that it may not receive a dependable system. By selecting a commercial unit, with proven software, the Navy can avoid the risks associated with hardware and software development. We find that the Navy acted reasonably in deciding to cancel the IFB on this basis. Furthermore, while the record does not state the cost impact of the Navy's proposed specification changes, it appears reasonable that the modifications the Navy seeks to make could result in cost savings to the government.

I&C also argues that the Navy's cancellation of the IFB was procedurally defective. I&C argues that in accordance with Federal Acquisition Regulation (FAR) § 14.401-1(c) (FAC 84-5) the written determination of cancellation of an IFB after opening must be made by the head of the agency and that the Navy's determination in this case was made by the contracting officer. The Navy argues that the written determination of cancellation in this case was signed by the contracting officer in accordance with Department of Defense FAR Supplement (DFARS) 14.401-1(c) (DAC 86-7). I&C responds that the DFARS cannot contradict the FAR unless there has been an approved deviation which is absent for this provision.

We find no merit to this argument. While contracting authority is initially vested in the heads of the agencies, the FAR grants broad authority to the agency heads to delegate contractual responsibilities. See FAR § 1.601 (FAC 84-33). The DFARS is issued by the Assistant Secretary of Defense for Production and Logistics by direction of the Secretary of Defense and in coordination with the Secretaries of the Army, Navy, Air Force and Director of the Defense Logistics Agency. DFARS § 1.101 (DAC 86-7). Thus, the authority granted a contracting officer pursuant to DFARS § 14.401-1(c) to make a written determination of cancellation is a proper delegation of authority. In any event, we note that such a procedural failure does not itself constitute a basis to sustain a protest, where, as here, the cancellation is warranted. See Southwest Marine, Inc., B-229596, et al., Jan. 12, 1988, 88-1 CPD ¶ 22.

The protest is denied.

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