

Mr. Burkard



Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** Special Systems Services, Inc.  
**File:** B-238168  
**Date:** April 4, 1990

Daniel M. Gross, Esq., Oviatt, Clark and Gross, for the protester.  
Herbert F. Kelley, Jr. Esq., and Sophia L. Rafatjah, Esq., Office of the Judge Advocate General, Department of the Army, for the agency.  
Richard P. Burkard, Esq., Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

Where agency negligently prepares government specifications for a procurement which results in agency cancellation of invitation for bids, after bid opening, claim for bid preparation costs is denied since mere negligence or lack of due diligence by the agency standing alone, does not provide a basis for the recovery of bid preparation costs.

## DECISION

Special Systems Services, Inc., protests agency actions under invitation for bids (IFB) No. DADA03-89-B-0040, issued by the Department of the Army for the repair and replacement of a fire alarm and detection system at Fitzsimons Army Medical Center, Aurora, Colorado. In its protest, Special Systems initially protested the agency's decision, after bid opening, to cancel the IFB due to inadequate and ambiguous specifications. In its comments on the agency's report which explained in detail the reasons for the cancellation, the protester concedes that the IFB was inadequate and that it would not have been appropriate for the Army to award a contract based on such a solicitation. Special Systems argues, however, that the issuance of the defective IFB violated applicable statutes and regulations, entitling the firm to the award of bid preparation and protest costs.

We deny the claim for costs.

The IFB was issued on July 27, 1989, and was amended three times before bids were opened on September 15. Special

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Systems submitted the low, responsive bid of the five bids received. The contract specialist noted that there was a large disparity in price between the government estimate and the prices offered by the bidders and among the bids themselves. The agency states that the Directorate of Engineering and Housing then reviewed the specifications and drawings in order to ascertain the reason for the disparity. The agency determined that the numerous inadequacies and ambiguities in the specifications caused the large differences in bid pricing and that the specifications, as written, did not adequately reflect the actual needs of the government. Consequently, the agency canceled the IFB.

As stated, the protester now concedes that the cancellation was proper but argues that the Army should pay its bid preparation and protest costs, since it was the apparent low bidder under the deficient solicitation. Special Systems asserts that the Army violated statutory and regulatory provisions requiring agencies to clearly, accurately, and completely state their needs. Special Systems argues that it was not reasonable for the agency to solicit bids based upon specifications which the agency knew or should have known were grossly inadequate.

While we agree that agencies must draft specifications which adequately reflect their needs, the issue here is whether the agency should be required to pay the protester's bid preparation costs where the agency negligently fails to do so and subsequently cancels the solicitation. The record shows that the Army prepared the specifications in good faith, but apparently negligently, and that it issued the IFB with the intent to award a contract. Although the protester alleges that the agency's decision to cancel the IFB was based on facts which were available prior to the issuance of the IFB, we find no evidence that the Army issued the solicitation in bad faith or arbitrarily. However, the agency concedes that the IFB "drastically failed to include many requirements necessary to meet the agency's actual minimum needs." Such negligence or lack of diligence provides no basis on which to allow recovery of bid preparation costs where, as here, there is no indication of bad faith, or that the agency acted arbitrarily or capriciously. Hac Corp., B-235136, July 20, 1989, 89-2 CPD ¶ 68; see Interstate Diesel Serv., Inc., B-229622, Feb. 12, 1988, 88-1 CPD ¶ 244; Computer Resource Technology Corp., B-218292.2, July 2, 1985, 85-2 CPD ¶ 14; cf. Keco Indus., Inc. v. United States, 203 Ct. Cl. 566, 492 F.2d 1200 (1974) (negligence is not sufficient showing of arbitrary or capricious conduct to warrant recovery of bid preparation expenses).

Further, since the protester admits that the agency properly canceled the solicitation, we find no basis to allow the recovery of the costs of filing and pursuing its protest. See Computer Resource Technology Corp., B-218292.2, supra.

Accordingly, the claim is denied.

  
for James F. Hinchman  
General Counsel