



Comptroller General
of the United States

Washington, D.C. 20548

144711

Decision

Matter of: Roy McGinnis & Co., Inc.

File: B-243626.2

Date: August 26, 1991

Theodore M. Bailey, Esq., for the protester.
Lester Edelman, Esq., and Barbara Bear, Esq., Department of
the Army, for the agency.
Barbara C. Coles, Esq., and Christine S. Melody, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Contracting officer properly canceled invitation for bids
after bid opening and resolicited on the basis of revised
specifications where original specifications failed to state
accurately its minimum needs in some respects and overstated
its minimum needs in other respects.

DECISION

Roy McGinnis & Co., Inc. protests the cancellation of
invitation for bids (IFB) No. DACA63-91-B-0044, issued by the
Department of the Army for the construction of a Computer
System Center in San Antonio, Texas. McGinnis contends that
the Army lacked a compelling reason to cancel the solicitation
once bids were opened and that it should be awarded the
contract under the IFB because it submitted the lowest
responsive bid.

We deny the protest.

The IFB, issued on February 26, 1991, listed several site
monitoring system requirements in connection with the
construction of the Center. The IFB also required the
contractor to furnish in part an underground electrical
distribution system and to perform interior electrical work.
On March 28, prior to bid opening that day, Engineered
Commercial Concepts, Inc. (ECCI) filed an agency-level protest
alleging that certain plans and specifications concerning
mechanical and electrical equipment were proprietary to one
source of supply.

Subsequent to bid opening and after reviewing ECCI's protest, the contracting officer determined that the "original specification [for the site monitoring system] was written so equipment from only one manufacturer, Liebert, the manufacturer of the equipment presently at the site, could be utilized by a bidder in order to meet the specifications." The agency also determined that there were flaws in both the specifications for the raised floor system's performance requirements and the computer room air conditioning specifications. In this regard, the contracting officer found that some of the specifications for the raised floor system either failed to reflect adequately the agency's minimum needs or overstated its needs and that the air conditioning specifications were too restrictive. For these reasons, the agency canceled the solicitation and indicated that a less restrictive solicitation would be issued in the future. On May 22, the agency reissued the solicitation in revised form.

McGinnis, the low bidder under the original IFB, argues that the agency lacked a compelling reason to cancel the IFB and, thus, the cancellation was improper. According to the protester, the cancellation was neither justified on the basis that the specification for the site monitoring system was proprietary to one firm nor on the basis that the specifications for the air conditioners and cooling towers were restrictive. While McGinnis also challenges the agency's characterization of certain specifications for the raised floor system as proprietary to one firm, the protester does not attempt to refute the agency's contention that some of these specifications were inadequate because they either failed to state accurately the agency's minimum needs or overstated its needs.

Contracting officers have broad discretion in determining when it is appropriate to cancel an IFB. However, the preservation of the integrity of the competitive bidding system requires the contracting officer to have a compelling reason to support the determination to cancel an IFB after bid opening. Federal Acquisition Regulation § 14.404-1(a)(1); Alliance Properties, Inc., 64 Comp. Gen. 854 (1985), 85-2 CPD ¶ 299. As a general rule, a compelling reason for cancellation exists when it is determined that an IFB fails to express properly the agency's minimum needs or overstates the minimum needs of the government. See Southwest Marine Inc., B-229596; B-229598, Jan. 12, 1988, 88-1 CPD ¶ 22; Aero-Executive Helicopters, B-227133, Aug. 17, 1987, 87-2 CPD ¶ 167.

We find that the agency had a compelling reason to cancel here because the specifications for the raised floor performance requirements were inadequate and did not reflect the Army's

needs. While the Army determined that it needed a stringer-type^{1/} floor system with floor panels that were capable of supporting a certain weight without deformation, the maximum weight to avoid deformation that was set forth in the original solicitation was significantly less than that the Army actually needed; specifically, the original solicitation required floor panels capable of supporting only a 1,000-pound concentrated load even though the Army actually needed floor panels capable of supporting a 10,000-pound concentrated load. Since the original solicitation clearly allowed bidders to offer a flooring system that was by far inferior to the one the Army actually needed, the contracting officer availed himself of the only prudent and reasonable solution--cancellation.

We find that cancellation also was justified on the basis that the original IFB overstated the Army's needs regarding the requirements for floor panels, stringers, and conductive flooring. The Army determined that the floor panel specification was restrictive because the agency did not have to have floor panels meeting the exact strength test in the solicitation (capable of supporting a concentrated load without deflecting more than 0.080 inch). As a result, the new solicitation calls for floor panels that are capable of supporting a concentrated load without deflecting more than 0.10 inch. Similarly, the Army determined that the requirement that stringers must be capable of supporting a 300-pound concentrated load was unnecessary because the agency only needed stringers that--as evidenced in the new solicitation--were capable of supporting a 250-pound load. Finally, the Army determined that the conductive flooring provision in the original solicitation requiring that the "total system electrical resistivity . . . shall be between 25,000 ohms and 100,000 ohms when tested for electrical resistance" was not necessary. As a result, the requirement has not been included in the new solicitation.

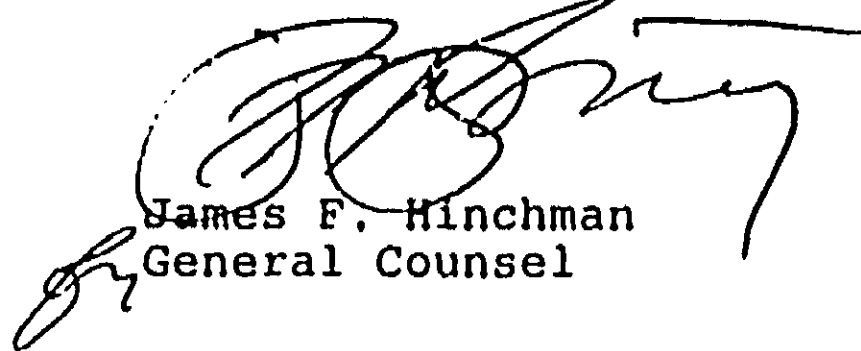
The more restrictive requirements for these items in the original solicitation clearly could have dissuaded potential bidders from competing based on their inability to meet the requirements. Even though the Army received nine bids in response to the solicitation, this by itself does not establish, as the protester suggests, that the requirements did not unduly restrict competition. Rather, a specification is unduly restrictive where it unnecessarily prevents one or more companies from competing. See Deere & Co., B-206453.2, Nov. 1, 1982, 82-2 CPD ¶ 392.

^{1/} Stringers are long horizontal timbers used to support a floor.

The Competition in Contracting Act of 1984, 10 U.S.C. § 2305(a)(1)(A) (1988), requires that solicitations be designed in a manner to achieve full and open competition and contain restrictive requirements only to the extent necessary to satisfy the contracting agency's minimum needs. Having reasonably determined that the IFB in this case both understated and overstated its minimum needs in different respects, the Army was justified in canceling the IFB and resoliciting on the basis of revised specifications that accurately reflect its minimum needs. See Control Concepts, Inc., B-233354.3, Apr. 6, 1989, 89-1 CPD ¶ 358.

Since we have determined that a compelling reason exists for cancellation, we need not consider McGinnis's contentions regarding the other grounds relied on by the Army.

The protest is denied.



James F. Hinchman
General Counsel