



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Edward Kocharian & Co. Inc.

File: B-244999

Date: November 18, 1991

Harry E. Kocharian for the protester,
Ann L. Giddings, Esq., and Paul Fisher, Esq., Department of
the Navy, for the agency.
Mary G. Curcio, Esq., and Andrew T. Pogany, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Procuring agency had compelling reason to cancel solici-
tation for air handlers after bid opening, where the solici-
tation, as issued, failed to include specifications that
were necessary to ensure that the agency's minimum needs for
operation and maintenance manuals and concrete pads would be
met.

DECISION

Edward Kocharian & Co. Inc. protests the cancellation after
bid opening of invitation for bids (IFB) No. N62477-89-
B-4868, issued by the Department of the Navy for the
replacement of air handlers and related work at the Naval
Surface Warfare Center, Silver Spring, Maryland. Kocharian
argues that as the low bidder it should have been awarded
the contract because the Navy did not have a compelling
reason to cancel the IFB.

We deny the protest.

The solicitation was issued on May 6, 1991, for the instal-
lation of three air handler units, associated chilled water
and steam coils, two new air compressors, and incidental
related work. At the bid opening on June 19, Kocharian
submitted the lowest bid of the 11 bids received. Subse-
quent to the bid opening, however, the Navy discovered a
number of deficiencies in the solicitation. Specifically,
among other things, the IFB required three air handler units
and two air compressors while the agency needed four air
handler units and one air compressor. The IFB also did not
include specification section 01730, "Operations and
Maintenance Data," or specification section 03300, "Cast in

Place Concrete." Based on these incomplete and inadequate specifications, the Navy determined that it was in the best interest of the government to cancel the solicitation and resolicit its requirements with accurate specifications. This protest followed.

Kocharian argues that the Navy had no reason to cancel the solicitation on the basis of defective specifications because the solicitation as issued was sufficient to meet the Navy's needs. We find, however, that the omission of the specifications concerning the maintenance manuals and the concrete pads on which the air handler units are to be installed alone provided the agency with a compelling reason to cancel the IFB.

The Navy explains that specification section 01011, included in the solicitation, contained only a general description of the agency's requirements for operations and maintenance manuals. The Navy states, however, that this specification was not sufficient because it did not provide the details the agency needs in the manuals. In contrast, the Navy reports that omitted specification section 01730 requires the submission of lubrication data, trouble-shooting guides and diagnostic techniques, wiring diagrams and control diagrams and removal and replacement instructions. The Navy asserts that the specific information is essential for the maintenance and repair of the equipment being provided and is not detailed elsewhere in the solicitation. The Navy also contends that specification section 03300, "Cast in Place Concrete," is essential so that offerors are aware of the required strength and composition of the concrete pads on which the air handler units are to be installed.

The preservation 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. As a general rule, a compelling reason exists when it is determined that an IFB overstates the minimum needs of the government or fails to express properly the agency's minimum needs. Joaquin Mfg. Corp., B-238169.2, May 16, 1990, 90-1 CPD ¶ 474.

Kocharian, while acknowledging that the specifications were "at worst" deficient, asserts that the omission of specification section 01730--concerning the manuals--did not provide a compelling reason to cancel the solicitation because specification section 01011, which was included in the IFB, was sufficient to inform bidders of the agency's need for manuals. Concerning specification section 03300, "Cast in Place Concrete," Kocharian asserts that it is irrelevant that the specification was omitted from the solicitation since the cost of concrete is de minimis, and

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Kocharian will provide concrete pads of the strength and composition needed by the Navy.

The Navy, however, is under no obligation to accept the risk that its needs will not be met. Specification section 01011, which was included in the solicitation, only provided general guidelines concerning the information to be included in the operations and maintenance manuals. Without specification section 01730, which gives further required information concerning the Navy's needs, the Navy will not necessarily get manuals that meet its needs, and Kocharian would not be obligated to provide them. Likewise, it may be that Kocharian would provide concrete pads of a strength and composition needed by the Navy; however, Kocharian would not be required to do so unless the requirements of specification section 03300 were included in the solicitation. Accordingly, we find that the agency had a compelling reason to cancel the solicitation.

The protest is denied.


James F. Hinchman
General Counsel