



Comptroller General  
of the United States  
Washington, D.C. 20548

## Decision

**Matter of:** P&C Construction

**File:** B-251793

**Date:** April 30, 1993

Bryan D. Caditz, Esq., Schwabe, Williamson, Ferguson & Burdell, for the protester.  
Frank K. Kotarski, Esq., and Diane Hayden, Esq., Department of the Navy, for the agency.  
Paula A. Williams, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Agency reasonably determined that there was a compelling reason to cancel an invitation for bids after bid opening where certain requirements in the specifications were no longer needed because the work specified had already been performed, and it appeared that the low bidder might have obtained unfair competitive advantage by learning of this information during unescorted site visits which other bidders may have reasonably believed were not permitted by language in the solicitation.

### DECISION

P&C Construction protests the rejection of its bid and the cancellation of invitation for bids (IFB) No. N68711-91-B-8057, issued by the Department of the Navy to upgrade the electrical system at the Marine Corps Air Ground Combat Center. P&C, the low bidder, contends it should have been awarded the contract because the Navy did not have a compelling reason to cancel the IFB after bids were opened.

We deny the protest.

The IFB stated that the contractor was to provide materials, labor, and equipment to provide new electrical distribution equipment and modification of existing electrical distribution equipment and incidental related work in accordance with the drawings and specifications in the IFB. Prospective bidders were invited to attend a scheduled pre-bid site visit and all bidders except Helix Electric, Inc., the third low bidder, participated in this escorted site visit.

The agency received 11 bids in response to the IFB. P&C's low bid was \$1,213,000, the next low bid was \$1,268,840, and the remaining bids ranged up to \$1,994,962.56. After bids were opened, three agency-level protests were filed by Electrical Systems Engineering Company, Helix Electric, Inc., and Lamb Engineering & Construction Co., the second low, third low, and sixth low bidders, respectively. The protesters alleged, among other things, that P&C had received an unfair advantage because its personnel had been provided unauthorized access to the Combat Center and had obtained information unavailable to other bidders.<sup>1</sup>

As a result of these protests, the contracting officer asked the requiring activity to review the specifications and drawings and determine whether they were consistent with the actual agency requirements. Upon review, agency officials ascertained that its needs had changed since the IFB was first issued because some of the work required under the IFB had been performed. Specifically, the Navy found that:

a. Buildings 1325, 1323, 1321, and 1330 have already been converted to the 12.5KV distribution system.

b. The two transformers required to be provided for buildings 1498 and 1584 have already been replaced.

c. The high voltage rack located by building 1905 is no longer existing. It has been replaced by a pad mounted transformer.

d. Building 1859 has already been converted to the 12.5KV distribution system.

f. The 5KV distribution lines feeding building 1458 and a portion of the lines feeding 1584 have already been removed.

g. The 5KV distribution lines outlined on [NAVFAC Drawing number 8005254] have already been removed.

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<sup>1</sup>P&C was given notice of the protests and an opportunity to respond. In its response, P&C denied that it had been afforded an unfair advantage and stated "we attended the job walk, drove through the job site on several occasions and have walked about every foot of the project."

The cost of the work required under the IFB that had already been completed was estimated by the Navy at \$15,459. Also, during its research with respect to the agency protests, the agency learned that P&C had requested additional escorted site visits, and the request had been denied; however, P&C had on several occasions revisited the work site on its own.

The agency canceled the IFB on the basis that inclusion in the solicitation of work already completed overstates the government's needs and that the additional site visits accorded P&C may have resulted in a competitive advantage which fostered the appearance of impropriety. Bidders were advised that the IFB had been canceled and all bids rejected due to a change in the agency's requirements. Following denial of its agency-level protest, P&C filed this protest with our Office.

Contracting officers have broad discretion in determining when it is appropriate to cancel an IFB. However, once bids have been opened, there must be a compelling reason to reject all bids and cancel the IFB. Federal Acquisition Regulation (FAR) § 14.404-1(a)(1); Southwest Marine, Inc., B-229596; B-229598, Jan. 12, 1988, 88-1 CPD ¶ 22; Alliance Properties, Inc., 64 Comp. Gen. 855 (1985), 85-2 CPD ¶ 299. As a general rule, the agency has such a compelling reason where an IFB contains specifications that do not reflect the agency's actual minimum needs. FAR § 14.404-1(c)(1); Instrument & Controls Serv. Co., B-231934, Oct. 12, 1988, 88-2 CPD ¶ 345, aff'd, Instrument & Controls Serv. Co.--Recon., B-231934.2, Nov. 4, 1988, 88-2 CPD ¶ 441.

P&C asserts that the cancellation was not justified on the basis that the specifications as written do not meet the government's needs. In particular, P&C argues that since the value of the work the Navy intends to delete is not significant in relation to the entire contract, inclusion of this work in the IFB constitutes a non-material defect in the specifications.

We do not agree. While the estimated dollar value of the already-performed work appears relatively low within the context of a \$1 million procurement, the two lowest bids are sufficiently close that changes in the scope of work could well impact the relative standing of the bidders. Notwithstanding the cost estimate, the work already performed, as described above, is broad in scope, affects numerous areas, and could well have affected the performance of other aspects of the solicitation requirements. Under the circumstances present here, we are not prepared to conclude that the specification changes are immaterial. While the protester suggests that the agency simply could have awarded P&C a contract under the IFB and then deleted the work which has already been performed, it would have

been improper to do so. An agency may not award a contract with the intention of modifying its terms after award since such a procedure would be prejudicial to other bidders under the invitation where, as here, the value of the duplicative work and its possible effect on the competitive bidding process is not de minimis. Pavel Enters., Inc., B-249332, Nov. 9, 1992, 92-2 CPD ¶ 330; Donco Indus., Inc., B-230159.2, Jun. 2, 1988, 88-1 CPD ¶ 522.

In concluding that the agency determination to cancel was reasonable, we recognize that the agency had a legitimate concern that P&C may have gained a competitive advantage by revisiting the project site on several occasions. While the solicitation encouraged bidders to visit the site, the specific IFB clause governing the pre-bid site visit provides that:

"A site visit [is] scheduled for 18 August 1992, at 9:00 a.m. local time. Participants will meet at the office of the Officer in Charge of Construction . . . . No other site visits will be authorized."

Ten of the 11 bidders attended that scheduled pre-bid site visit. The agency reports that not all of the areas specified in the drawings were visited during the escorted site visit, although bidders were apparently permitted to inspect areas by themselves during that site visit. Subsequent to the escorted site visit, only P&C requested additional escorted site visits, and while that request was denied, as noted previously, P&C revisited the project site on several occasions.

P&C insists that it did not gain an unfair advantage over other bidders by revisiting the work site because unescorted site visits were not prohibited by the solicitation, and all bidders had the same opportunity to revisit the site. In our view, while the agency denied P&C's request for another escorted site visit, other prospective bidders, who did not request an additional escorted visit and did not, insofar as the contracting officer is aware, make any unescorted visits, may well have interpreted the solicitation language "no other site visits will be authorized" to preclude any additional site visits. Given the relatively small price difference between the low and second low bids, and the fact that P&C may have obtained information (such as that certain work required by the specifications would not actually be required) from the additional site visits that it used to its competitive advantage, we think the contracting officer

could reasonably determine that cancellation was warranted to eliminate the appearance of P&C's unfair competitive advantage. See Childers Serv. Center, B-246210.3, June 17, 1992, 92-1 CPD ¶ 524.

The protest is denied.



*for* James F. Hinchman  
General Counsel