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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

Decision

Matter of: Cummins Power Systems, LLC

File: B-402079.2

Date: January 7, 2010

Paul A. Debolt, Esq., and Jeffery M. Chiow, Esq., Venable, LLP, for the protester. Debra J. Talley, Esq., Department of the Army, for the agency. Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Compelling reason existed to cancel invitation for bids (IFB) after bid opening--and protest challenging cancellation is denied--where IFB restricted competition by requiring offeror to be a certified distributor of brand name item, and agency determined that restriction exceeded its needs.

DECISION

Cummins Power Systems LLP protests the post-bid opening cancellation of invitation for bids (IFB) No. W15P7T-09-B-J005, issued by the Department of the Army for Onan brand engines, which are used in tactical quiet generators.

We deny the protest.

The IFB was issued on a brand name basis for Onan engines and limited the competition to Onan-certified distributors. IFB at 2. On September 30, 2009, the Army made award to Engineered Electric Company DBA Fermont (Fermont). Cummins challenged the award in a protest filed in our Office, arguing that Fermont was not eligible for the award because it is not a certified distributor of Onan engines. In response, the agency advised our Office that it had decided to cancel the IFB and would re-issue it without the certified distributor restriction. Cummins asserts that the cancellation is improper and that, as the sole responsive, responsible bidder under the IFB, it should receive the award.

A contracting agency must have a compelling reason to cancel an IFB after bid opening due to the potential adverse impact on the competitive bidding system of resoliciting after bid prices have been exposed. Federal Acquisition Regulation

(FAR) § 14.404-1(a) (1); HDL Research Lab, Inc., B-254863.3, May 9, 1994, 94-1 CPD ¶ 298 at 5. An IFB may be canceled and all bids rejected after opening where, consistent with the compelling reason standard, cancellation is clearly in the public's interest. FAR § 14.404-1(c)(10). An agency's desire to obtain enhanced competition by materially modifying specifications to make them less restrictive constitutes a valid reason for canceling an IFB under this FAR standard. Hroma Corp., B-285053, June 6, 2000, 2000 CPD ¶ 88 at 4; Diversified Energy Sys.; Essex Elec. Eng'rs, Inc., B-245593.3, B-245593.4, Mar. 19, 1992, 92-1 CPD ¶ 293 at 3.

Here, in response to Cummins's protest, the agency explains that, while it requires Onan engines, it has no legitimate need for the contractor to be a certified Onan distributor. Agency Report (AR) at 5. In this regard, the agency notes that Fermont has provided the engines in the past, in a manner that meets its needs. *Id.* at 6.¹ This being the case, and since it is clear that at least one bidder—Fermont, which submitted the lowest price—would be precluded from competing if the certification requirement is not removed from the IFB, the agency reasonably determined that resolicitation would result in enhanced competition and, accordingly, that cancellation was in the public's interest. Under these circumstances, there was a compelling reason to cancel the IFB, and the cancellation therefore was unobjectionable. See Siemens Power Corp.; Asea Brown Boveri, Inc., B-257167, B-257167.2, Aug. 11, 1994, 94-2 CPD ¶ 160 at 2-3 (cancellation was unobjectionable where agency determined it had overstated its needs and less restrictive specifications should result in enhanced competition and lower costs).

Cummins argues that, because it submitted a responsive bid and it is a responsible bidder, it will be prejudiced by the cancellation and resolicitation. However, the fact that Cummins may be prejudiced does not preclude cancellation where, as we have found is the case here, there is a compelling reason for the cancellation. In any case, we note that Cummins will have the same opportunity as the other bidders to submit a new bid with knowledge of the other bids submitted.

The protest is denied.

Lynn H. Gibson
Acting General Counsel

¹ Cummins asserts that the agency's corrective action conflicts with the justification and approval (J&A) the agency originally prepared to limit the competition to certified distributors. The Army responds that the J&A was never intended to approve limiting the competition to certified distributors. We need not resolve this dispute in light of the agency's subsequent determination that it does not need the engines to be provided by a certified Onan distributor.