

01516

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

*J. Cohen  
Proc I*

**FILE: B-188124**

**DATE: February 8, 1977**

**MATTER OF: Advance Window Systems, Inc.**

**DIGEST:**

1. Although determination whether contract should be terminated for convenience of Government is matter of contract administration within discretion of procuring agency, our Office will review procedures leading to award where termination is effected because agency considers such procedures defective.
2. Award of contract pursuant to advertising statutes must be made upon same terms offered all bidders. Therefore, where "clarification" to solicitation increasing work requirements was received by some bidders prior to bid opening but not by others, award to bidder who did not receive clarification, and whose bid was based on IFB as initially issued, was improper.

Advance Window Systems, Inc. (Advance), protests the proposed termination by the Veterans Administration (VA) of a contract with Advance for the removal and replacement of windows at the VA Hospital in Saginaw, Michigan.

A solicitation was issued for the project on August 24, 1976. On September 21, 2 days prior to bid opening, a "clarification" of the specifications, which increased the work requirements, was sent to prospective bidders by mailgram. However, at least three bidders, including Advance, did not receive the mailgram until after bid opening. Consequently, their bids were based only on the specifications set out in the original solicitation, while the bids submitted by those firms that did receive the September 21 mailgram included consideration of the "clarification" contained therein. After bid opening, it was determined that those bids based on the larger work requirements exceeded the funds available for the project. Award was therefore made to Advance, the low bidder that based its bid on the requirements of the original solicitation.

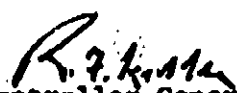
B-188124

In response to a protest filed with the VA against the award, the VA has determined that the award to Advance was improper since all bids were not based on the same specifications, and since other prospective bidders may have declined to bid because of a "misapprehension concerning the specifications." Accordingly, the contract with Advance is being terminated for the convenience of the Government, and the requirement will be readvertised.

Generally, the determination whether a contract should be terminated for the convenience of the Government and the proper payment due as a result thereof are matters of contract administration and, therefore, beyond the authority of our Office. Swiss Controls, Inc., B-185861, March 1, 1976, 76-1 CPD 141. However, we will review the procedures leading to the award of the contract in issue where the termination is effected because the agency considers that such procedures were defective. The Ohio State University Research Foundation, B-185242, June 16, 1976, 76-1 CPD 381; Service Industries, Inc. et. al., 55 Comp. Gen. 502 (1975), 75-2 CPD 345.

We agree with the VA determination that the award to Advance on the basis of the initial solicitation, without consideration of the effect of the September 21 "clarification," was improper. In this connection, it is well established that the award of a contract pursuant to the advertising statutes must be made on the same terms offered to all bidders. See 41 Comp. Gen. 593 (1962); 37 *id.* 524, 527 (1958); Federal Procurement Regulations § 1-2.301(a) (1964 ed. amend. 118). Accordingly, we believe that termination of the contract with Advance for the convenience of the Government would be appropriate.

The protest is denied.

  
Deputy Comptroller General  
of the United States