

Mr. Lieberman  
T 14504

**DECISION**



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

*[Protest Against IFB Cancellation]*

FILE: B-197208

- DATE: August 5, 1980

MATTER OF: Man Barrier Corporation

**DIGEST:**

1. Compelling reason to cancel invitation exists when ambiguity in invitation affects bidding process.
2. Specifications are ambiguous when they are susceptible of two or more reasonable interpretations.
3. Bidder was prejudiced by ambiguity in invitation where specifications were not sufficiently clear and precise as to enable bidder to know what was required in order to compete on equal basis.
4. Allegation that contractor was permitted to deliver noncompliant product deals with matter of contract administration which is not for resolution under Bid Protest Procedures.
5. Protester is not entitled to bid preparation costs where agency determination to cancel solicitation had reasonable basis due to existence of prejudicial ambiguity in specifications.

Man Barrier Corporation (MBC) protests the cancellation of Defense Logistics Agency (DLA) invitation for bids (IFB) No. DLA700-79-B-1507 for certain barbed tape concertina (BTC). The IFB was cancelled because the contracting officer determined that the specifications regarding a chromate treatment requirement were ambiguous. MBC contends that the specifications were clear and unambiguous in this respect, that it was the only responsive bidder, and that, therefore, it was entitled to award under the IFB.

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We do not consider the protest to have merit.

The IFB was originally issued on May 21, 1979, with a bid opening date of June 22, 1979. Bid opening was postponed because MBC sought and obtained clarification from DLA concerning a number of aspects of the IFB specifications. Bid opening occurred on July 25, 1979. MBC submitted a bid of \$18.92 per roll, f.o.b. origin, and \$19.72 per roll f.o.b. destination. Bataco Industries, Inc. (Bataco), the only other bidder, submitted a bid of \$15.30 per roll, f.o.b. origin, and \$16.05 per roll, f.o.b. destination.

There had been two prior solicitations by the issuing activity for this same item, one in 1978 and one earlier in 1979, both of which had been bid on only by MBC and Bataco; both had resulted in award to Bataco as the low responsive bidder. In response to a request from MBC in February 1979, DLA furnished MBC for testing purposes a sample of the BTC which Bataco supplied to DLA under one of the previous contracts. On the date of bid opening of the IFB at issue, MBC advised DLA that its testing of the sample revealed that the BTC failed to comply with the IFB specifications in several respects. In particular, as regards the issues raised in this protest, MBC alleged that the BTC did not have the chromate treatment which was required under the current IFB specifications and which had been required in substantially similar form under the prior IFB. This chromate treatment requirement is set forth in QQ-Z-325C, a specification which is cross-referenced in paragraph 3.3.1 of Military Specification MIL-B-52489B(ME), which in turn is incorporated by reference in the IFB at issue. In response to these allegations, DLA initiated a quality assurance review of Bataco's production facilities.

The review report concluded, in relevant part, that the BTC provided by Bataco was not subjected to the chromate treatment required by QQ-Z-325C and noted various other production deficiencies. When apprised of these findings, Bataco contended that the chromate treatment requirement set forth in QQ-Z-325C did not pertain to the BTC supplied by Bataco which was zinc coated by a hot dip process. Bataco interpreted the QQ-Z-325C chromate treatment requirement as

applicable only to BTC which was zinc coated by electrodeposit rather than by hot dip processing.

The contracting officer received a copy of a pre-award survey (conducted because of the findings in the review report) indicating that BTC which would be supplied by Bataco under the IFB at issue would not be subjected to the chromate treatment specified in QQ-Z-325C and therefore recommending that award not be made to Bataco. The Defense Construction Supply Center (DCSC) then inquired whether such chromate treatment was a required Government need and was advised by the U.S. Army Mobility Equipment Research and Development Command (the specification-preparing activity) that it was necessary. DCSC then advised that, in view of the fact the IFB was intended to require QQ-Z-325C compliant chromate treatment regardless of which method of zinc application was used, the specifications were ambiguous with respect to BTC produced from hot dip zinc processing. In view of this ambiguity, the contracting officer concluded that cancellation and resolicitation was warranted. The subsequent resolicitation changed the specifications to make it clear that some form of chromate treatment was required in conjunction with any zinc coating method of application. MBC has protested the decision to cancel and resolicit.

Paragraph 3.3.1 of Military Specification MIL-B-52489B(ME), as amended, in the cancelled IFB, states in relevant part:

"Steel strip for barbed tape shall conform to QQ-S-698, cold rolled, quarter hard (No. 3 Temper), No. 2 (regular bright) or optional finish, not less than 0.020 inch nominal thickness and shall be electroplated with zinc in accordance with QQ-Z-325, Type II, Class 3. Plating may be applied before all machining, brazing, forming and perforating. Hot dip zinc coating process may be used if the specified thickness is maintained."

QQ-Z-325C, in its section concerning scope, provides that: "This specification covers the

requirements for electrodeposited zinc coatings." QQ-Z-325C indicates that Class 3 zinc coating has a thickness of .00020 inch. It also contains a requirement that Type II coating (i.e., zinc coating with supplementary chromate treatment) must meet a corrosion requirement expressed in terms of showing no visually apparent corrosion after continuous 96-hour exposure to salt spray. QQ-Z-325C contains no specific thickness requirement relating to the chromate treatment coating.

DLA concluded that the specification was ambiguous because the references reasonably could be interpreted to mean that chromate treatment per QQ-Z-325C was not applicable where zinc coating was applied by the hot dip alternative--rather than by electrodeposit. Accordingly, the decision to cancel was made on the basis of Defense Acquisition Regulation (DAR) § 2-404.1 (1976 ed.) which reads in relevant part:

"(a) The preservation of the integrity of the competitive bid system dictates that, after bids have been opened, award must be made to that responsible bidder who submitted the lowest responsive bid, unless there is a compelling reason to reject all bids and cancel the invitation. \* \* \*

"(b) \* \* \* Invitations for bids may be cancelled after opening but prior to award when such action is consistent with (a) above and the contracting officer determines in writing that--

(i) inadequate or ambiguous specifications were cited in the invitation."

MBC takes the position that its interpretation of the specifications is the only reasonable one and that there is no ambiguity. In support of this position, it relies on three arguments: "(1) MBC and Government engineers never identified the alleged ambiguity

after months of specification analysis; (2) Statements by Bataco to the Government establish Bataco did not interpret the specification as excluding chromate treatment; (3) It is unreasonable to interpret the specification in terms of the alleged ambiguity."

The fact that MBC and Government engineers did not identify this ambiguity during specification analysis is not dispositive. Bataco's interpretation was not raised or considered during the course of this analysis as a possible meaning of the existing specification language. The essence of ambiguity is that more than one reasonable interpretation is possible. Although a cancellation after exposure of bid prices is unfortunate, we have held that a contracting agency may exercise its prerogative to cancel a solicitation regardless of when or how the information precipitating the cancellation first surfaces. Edward B. Friel, Inc., et al., 55 Comp. Gen. 488, 490, (1975), 75-2 CPD 333; Allied Contractors, Inc., B-186114, July 19, 1976, 76-2 CPD 55.

Regarding the second allegation, Bataco's correspondence with the Government establishes that Bataco did not believe that QQ-Z-325C chromate treatment was required in conjunction with the hot dip zinc application process. This is the crux of the ambiguity and Bataco's prior actions and correspondence tend to show that it consistently interpreted the specification in a manner substantially different from that intended by the agency or applied by MBC.

We are unable to agree with MBC's third allegation that Bataco's interpretation of the specification is unreasonable. While MBC's interpretation was the one intended by the agency, Bataco's interpretation was not precluded by the IFB. The specification in question does appear to allow for the use of hot dip zinc treatment in a manner which could reasonably be construed to mean that the QQ-Z-325C chromate treatment requirements were inapplicable. Although reference is made in this alternative to thickness specifications in QQ-Z-325C, the only thickness specified in QQ-Z-325C relates to the zinc coating. The chromate requirement

is described in terms of capacity to withstand a 96-hour salt-spray test without reference to any particular thickness. Additionally, as Bataco has pointed out, QQ-Z-325C does define its scope solely in terms of electrodeposit without reference to hot dip processing. Read in this light, the hot dip zinc coating alternative might be understood as one which did not mandate chromate treatment.

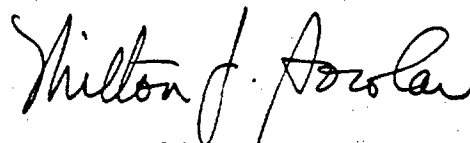
MBC has also asserted that it has been subjected to unfair competitive practices. Under the two prior IFB's, allegedly Bataco was permitted to deliver non-compliant BTC after MBC was prejudiced because it bid higher to reflect the costs associated with producing a compliant product. This deals with a matter of contract administration which is not for resolution under our Bid Protest Procedures, 4 C.F.R. part 20 (1980). Post Marketing Corporation, B-197472, January 28, 1980, 80-1 CPD 76.

Finally, MBC has asserted that it is entitled to bid preparation costs, in an unspecified amount, because DLA allegedly acted in an arbitrary manner in cancelling the solicitation and denying MBC an award. The gist of this allegation is that the cancellation was not the result of the existence of a real ambiguity, but was due to Bataco's "tortured construction of the specifications."

As MBC correctly asserts, the general standard for entitlement to bid preparation costs is a showing that the Government acted arbitrarily or capriciously with respect to a claimant's bid. Scona, Inc., B-191894, January 23, 1979, 79-1 CPD 43. Specific grounds for recovery under this general standard include: where there has been subjective bad faith on the part of the procuring officials; where there is no reasonable basis for an administrative decision; where the procuring officials have exceeded their statutory or regulatory discretion; or where there has been a violation of pertinent statutes or regulations. Keco Industries, Inc. v. United States, 492 F.2d 1200 (Ct.Cl. 1974).

In this instance, MBC is asserting essentially that there was no reasonable basis for the administrative determination of ambiguity warranting cancellation. As indicated above, DLA did in fact have a reasonable basis for this determination. The cancellation was properly made in view of the specification ambiguity and the attendant prejudicial effect.

In view of our conclusion that the IFB was properly cancelled, the protest and the claim for bid preparation costs are denied.



For The Comptroller General  
of the United States



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

B-197208

August 5, 1980

The Honorable William R. Ratchford  
House of Representatives

Dear Mr. Ratchford:

We refer to your letter to our Office dated February 22, 1980, in regard to the protest of Man Barrier Corporation concerning the cancellation of solicitation No. DLA700-79-B-1507 issued by the Defense Logistics Agency.

By decision of today, copy enclosed, we have denied the protest.

Sincerely yours,

A handwritten signature in cursive script that reads "Milton J. Jordan".

For The Comptroller General  
of the United States

Enclosure