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DECISION



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

Protest Alleging Award Was Based On Criteria Not Specified in IFB

FILE: B-198533

DATE: April 27, 1981

DLG05062

MATTER OF: Universal Communications Systems, Inc.;

Fisk Telephone Systems, Inc. *DLG00882*

DIGEST:

1. Where agency cancels IFB for erroneous reasons, but subsequently presents different reason that would have supported action, if advanced initially, GAO will accept subsequent rationale since inquiry is to determine if agency's actions complied with applicable statutes and regulations in light of totality of circumstances as they existed at time action was taken.
2. Since IFB failed to include significant factor to be used in evaluation of bids, contracting agency reasonably concluded that cogent and compelling reason existed to cancel IFB after bid opening.

The Veterans Administration (VA) issued an *AGC00016* invitation for bids (IFB) for the installation of a telephone system at the VA Medical Center, Dallas, Texas. Award was made to Southwestern Bell Telephone *AGC0050* Company (Southwestern). *DLG05558*

Two lower bidders, Universal Communications Systems, Inc. (UCS), and Fisk Telephone Systems, Inc. (Fisk), filed protests against the award, contending that the award was based on criteria not specified in the IFB, which displaced their bids. In addition, Fisk objected to any consideration by VA of UCS's bid. In response to and in agreement with the protests, VA terminated Southwestern's contract. The VA then canceled the IFB for reasons which it now believes to have been erroneous. However, the VA takes the position that the cancellation was proper because of the IFB's failure to apprise bidders of a significant evaluation factor which originally resulted in the award to Southwestern. That factor was the addition to each bid other than Southwestern's of the estimated

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cost of VA construction, which was necessary to permit the eventual contractor to complete the installation of its system.

UCS protested the cancellation and the VA's failure to make award to UCS. Fisk recognizes that the VA has discretion concerning cancellation of a procurement because "evaluation factors admittedly applied by the VA were not set forth in the Solicitation." Moreover, Fisk contends that had it known the actual evaluation factors, it would have submitted a different bid.

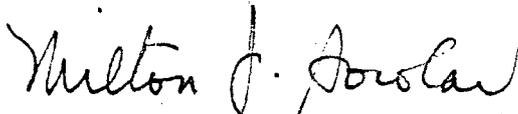
Although the reasons initially advanced by the VA to support cancellation of the IFB were erroneous, we have held that a subsequent statement justifying a particular action containing a different reason which would have supported the action, if advanced initially, is acceptable. Our inquiry is to determine if the contracting actions taken complied with applicable statutes and regulations in light of the totality of the circumstances as they existed at the time. Tosco Corporation, B-187776, May 10, 1977, 77-1 CPD 329.

We have long recognized that the authority of a contracting officer to cancel a solicitation is extremely broad and in the absence of bad faith or an abuse of discretion, a decision to cancel a solicitation will be upheld. Scott Graphics, Inc., et al., 54 Comp. Gen. 973 (1975), 75-1 CPD 302. However, because of the potential adverse impact on the competitive bidding system of canceling an IFB after bid prices have been exposed, contracting officers, in the exercise of their discretionary authority, must find a cogent and compelling reason exists that warrants cancellation. Spickard Enterprises, Inc., et al., 54 Comp. Gen. 145 (1974), 74-2 CPD 121; Scott Graphics, supra.

The subsequent reason advanced by the VA is a cogent and compelling reason and supports the VA's cancellation. Our Office and the Federal Procurement Regulations (FPR) specifically permit cancellation after opening, where, as here, the IFB does not provide for consideration of all factors of cost to the Government. FPR § 1-2.404-1(b)(3) (1964 ed., Circ. 1),

49 Comp. Gen. 135. Although the IFB made VA responsible for construction necessary to supplement the present system, even UCS agrees that the IFB does not advise the bidders that the VA's estimated cost of construction would be considered in the evaluation of bids. The impact of this undisclosed factor was significant. The VA advises that it has conservatively estimated the cost of construction to be \$521,200. This amount is over 33-1/3 percent of UCS's low bid of \$1,434,133 and increased UCS's evaluated bid to \$1,955,333, or \$82,942 greater than Southwestern's third low bid of \$1,872,391. Finally, UCS's claim that the VA's cost estimate was high is of no consequence because the IFB did not permit the evaluation of construction costs.

In view of the above, we conclude that VA's determination that a cogent and compelling reason to cancel the IFB exists is reasonable, and the UCS protest is denied. Because of this, Fisk's protest against the USC bid will not be considered.



Acting Comptroller General
of the United States