

DECISION

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

26972

FILE: B-212775.2**DATE:** December 7, 1983**MATTER OF:** Richard Hoffman Corporation**DIGEST:**

Agency did not have compelling reason to cancel IFB and resolicit even if IFB was inadequate where award to the low responsive bidders would have met the agency's needs and would not have prejudiced any other firm.

Richard Hoffman Corporation protests the cancellation of invitation for bids (IFB) DACA27-83-B-0047, and the resolicitation (IFB DACA27-83-B-0103) and award of a contract by the Corps of Engineers for the design and construction of a metal building to house the MISO Computer Facility at Fort Sheridan, Illinois. Hoffman maintains that it was the low responsive bidder under the original solicitation (-0047) which the Corps says it canceled after determining that the bid schedule was ambiguous and had confused offerors, including Hoffman. We sustain the protest.

The Corps canceled IFB -0047 because it found that a number of bidders did not complete the IFB bid schedule as the agency had expected. The schedule is reproduced below:

BIDDING SCHEDULE

<u>Item No.</u>	<u>Description</u>	<u>Estimated Quantity</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Estimated Amount</u>
1	Pre-engineered Metal Building	1	Job		\$ _____
1	Site Work	1	Job		\$ _____

TOTAL \$ _____

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The Corps indicates that while it anticipated that offerors would allocate the total price between the two line items, several offerors did not read the line items as covering all of the work to be done. Hoffman, for example, bid \$55,000 for the pre-engineered metal building, \$25,000 for site work, and a total price of \$480,600. Other offerors bid only a lump sum price without furnishing line item prices.

We initially point out that we agree with the Army that the bidding schedule was misleading. Certainly the Army's expectation that the sum of the prices bid for each item would correspond to the total bid is consistent with usual bidding practice. The bidding instructions, however, state that the bidder offers to perform at the prices in its schedule all work for the design, fabrication, supply, delivery, and installation of a metal building approximately 80 feet by 100 feet. The work also includes site preparation, foundation, and interior work including installation of partitions, floors, ceilings, electrical wiring and utilities. On its face, the schedule item Pre-engineered Metal Building does not include, necessarily, anything but the cost of fabricating the metal structure, while the schedule term Site Work does not necessarily refer to other than site preparation, and thus may not include interior work--partitioning, flooring, utility connections and so forth--performed after the building is erected.

We sustain the protest, however, because assuming Hoffman's bid is otherwise responsive, we do not see how any offeror would have been prejudiced by award to Hoffman, whose total price was low. We have held that an ambiguous IFB should not be canceled after bids have been exposed if award under the IFB would meet the government's actual needs and there is no showing of prejudice to the other bidders. American Mutual Protective Bureau, 62 Comp. Gen. 354 (1983), 83-1 CPD 469. Here, the Corps admits that award was to be based on the low total price for the entire job, with the two item prices being merely for informational purposes, so that award to the low total bidder under the initial IFB clearly would meet the Corps' needs. Further, while bidders may well have been confused or misled as to what approach to take in pricing the two items--Hoffman's approach or the Corps' expected one--the Corps

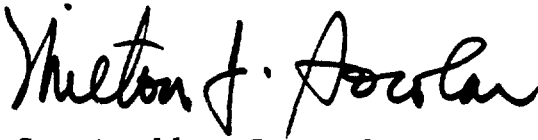
does not even suggest that anyone was misled to his prejudice in entering a total price. The fact is all bidders recognized that award was to be based on the total price and bid accordingly, and Hoffman's total price was low.

We recognize that the Corps suggests that Hoffman's bid was nonresponsive in that Hoffman annotated its bid to exclude from its price fees for licenses and permits. According to Hoffman, however, no licenses or permits are required, and the Corps has not contended otherwise. We cannot conclude, therefore, that Hoffman's annotation was material to the bid's acceptability. Cf. Teletronix, Inc., B-207475.3, November 17, 1982, 82-2 CPD 452 (failure to indicate amount of applicable duty was properly waived as a minor informality where the omission had no bearing on the evaluation of price or on the offeror's obligation to perform).

The protest is sustained.

We recognize that award was made in the face of the protest based upon the need to accomplish sufficient work before the winter season to permit project completion in consonance with the installation schedule for the computer equipment to be housed. We are advised, however, that only 4 to 5 percent of the work has been accomplished to date. In the circumstances, we recommend that consideration be given to terminating the contract and awarding to Hoffman.

Since this decision contains a recommendation for corrective action to be taken, we are furnishing copies to the Senate Committees on Governmental Affairs and Appropriations, and the House Committees on Government Operations and Appropriations in accordance with section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. § 720, as adopted by Public Law 97-258 (formerly 31 U.S.C. § 1176 (1976)), which requires the submission of written statements by the agency to the Committees concerning the action taken with respect to our recommendation.


for Comptroller General
of the United States