

DECISION

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

27067

FILE: B-208876.2**DATE:** December 20, 1983**MATTER OF:** Winandy Greenhouse Company,
Inc.--Reconsideration**DIGEST:**

An invitation for bids for the replacement of glass in two greenhouses which omitted a material requirement for snow and wind load-bearing capacity was defective and was properly canceled, since the omission precluded consideration of a material requirement and, therefore, the minimum needs of the government were not met.

Winandy Greenhouse Company, Inc. (Winandy), requests reconsideration of our decision in Winandy Greenhouse Company, Inc., B-208876, June 7, 1983, 83-1 CPD 615. Our Office denied Winandy's protest against an award to Albert J. Lauer, Inc. (Lauer), under invitation for bids (IFB) No. 4010-N-82, issued by the United States Department of Agriculture (Agriculture). The IFB called for the replacement of glass in two greenhouses.

After the award to Lauer, the contracting officer states that she discovered that the specifications in the IFB were defective in failing to specify the overall minimum snow and wind load-bearing capacity necessary to satisfy the minimum needs of the government and she terminated Lauer's contract and resolicited the requirements. The new IFB called for a snow load-bearing capacity of 30 pounds per square foot and a wind load-bearing capacity of 25 pounds per square foot. Winandy denied that the requirements set forth in the original specifications were insufficient to satisfy the government's needs and, therefore, contended that the IFB was improperly canceled and that an award should have been made to its firm. Our Office stated that Winandy failed to show that the contracting officer acted arbitrarily or capriciously in canceling the original solicitation in order to change the requirements of the procurement to properly express the minimum needs of the government and, therefore, we found no basis to object to the cancellation of the IFB.

027461

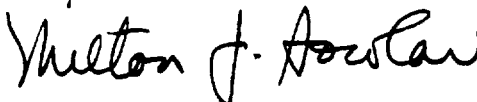
In its request for reconsideration, Winandy argues, in essence, that there was no justification to cancel the initial IFB since the specifications of the manufacturer of the system it proposed indicate that the system contained a snow load-bearing capacity of 30 pounds per square foot and a wind load-bearing capacity of 25 pounds per square foot. Therefore, Winandy contends that it should have been awarded the contract under the original IFB since its system allegedly met the government's minimum needs.

For the following reasons, we disagree with Winandy's contentions and affirm our prior decision. The procuring agency indicates that the specifications in the initial IFB were defective for several reasons, including the fact that the IFB omitted the minimum roof load requirements. Therefore, there was no assurance that bids based on the advertised specifications were all submitted on an equal basis. Further, if the government accepted any of the bids, the procuring agency states that there would be no assurance that the load requirements needed would be obtained. Therefore, the agency considered it necessary to resolicit bids based on revised specifications which contained all requirements.

Contracting officers have broad authority to reject all bids and cancel a solicitation. Engineering Research, Inc., 56 Comp. Gen. 364 (1977), 77-1 CPD 106. However, because of the adverse effect such a cancellation can have on the competitive bidding system, a compelling reason must exist that warrants the cancellation. Federal Procurement Regulations § 1-2.404-1 (1964 ed. circ. 1). Although not all specification defects need result in cancellation after opening, cancellation is appropriate if award under deficient specifications would not result in satisfying the government's needs or if one or more bidders might have been misled. 51 Comp. Gen. 426 (1972). Here, the specifications were inadequate in that they omitted the required load-bearing capacities which the procuring activity determined essential to its minimum needs. Therefore, since cancellation of the IFB was effected because the invitation failed to reflect the minimum needs of the government, such action was not an abuse of the discretion. Engineering Research Inc., supra.

We disagree with Winandy's position that the IFB should be reinstated and an award made to its firm. Even if the specifications of the manufacturer of the system it proposed indicate compliance with the government's minimum needs, the information accompanying Winandy's bid stipulates the design conditions of the glass to carry a snow load of 15 pounds per square foot on horizontally projected areas and a 20-pound-per-square foot wind load of vertically projected areas. This is less load-bearing and wind-bearing capacity than required to satisfy the government's minimum needs and only the information accompanying a bid may be considered in determining whether a bid is responsive or not. Further, an award to Winandy (or any other bidder) under the original IFB would not have served the procuring agency's needs since the contractor would not have been legally bound to comply with the required minimum load-bearing capacities.

Since Winandy has not shown that our decision contained any errors of fact or law, it is affirmed.


for Comptroller General
of the United States