

DECISION



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

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FILE: B-215281.3; B-215281.4 **DATE:** March 25, 1985

MATTER OF: Energy Maintenance Corporation; Turbine
Engine Services Corporation

DIGEST:

1. Agency did not have a compelling reason to cancel an IFB and resolicit, and a protest requesting reinstatement of the IFB is sustained where, even though the bidding schedule did not enumerate all of the tasks comprising the agency's needs, the remainder of the IFB and the attached standard specification did fully enumerate these tasks; award to the low responsive bidder based on such a clear statement of the work required would meet the agency's actual needs and would not be prejudicial to other bidders.
2. An ambiguity as to the low bidder's intended price does not render the bid nonresponsive or otherwise unacceptable; where the bid would be low by a significant margin under the least favorable interpretation, the intended price can be clarified after bid opening.
3. A protest that specifications in a resolicitation are inadequate is dismissed as academic where award is recommended under the original solicitation.

Energy Maintenance Corporation (EMC) protests the United States Coast Guard's cancellation of invitation for bids (IFB) No. DTCG40-84-B-0173 (hereinafter IFB 0173) and the resolicitation of the requirement under IFB No. DTCG40-84-B-0281. EMC seeks award under the original solicitation. Turbine Engine Services Corp. (Turbine) maintains that the specifications in the new IFB are inadequate and ambiguous in several respects.

We sustain EMC's protest and dismiss Turbine's protest as academic.

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IFB 0173 covered a Coast Guard requirement for overhauling gas turbine generator engines used in Coast Guard vessels, and included Standard Repair Specification No. 2630 which called for a major shop inspection, repair, reassembly, testing, and other tasks in performing the overhaul. The bidding schedule in the solicitation called for 2 separate prices: one price for a definite item entitled simply "Gas Generator Major Shop Inspection," but intended by the Coast Guard to refer to all of the tasks enumerated in the standard specification; and one price for an indefinite item--the replacement parts which might be used in performing the overhauls (the IFB also included a list of parts, each to be priced individually). Award was to be based on the lowest total price for the 2 items. The Coast Guard received the following responsive bids:

	Definite Item	Indefinite Item	Total
EMC	\$20,000.00	\$ 75,532.80	\$ 95,532.80
Gas Turbine Corp.	\$38,000.00	\$ 87,015.00	\$125,015.00
Airwork Corp.	\$29,000.00	\$141,729.00	\$170,729.00
Turbo Power and Marine Systems, Inc.	\$48,900.00	\$313,933.09	\$362,833.09
Aviall	\$99,157.00	\$342,737.00	\$441,894.00

Turbine's bid was rejected as nonresponsive.

Following bid opening, the Coast Guard determined that the IFB was ambiguous and should be canceled based on its suspicion that bidders had been confused as to what tasks were encompassed by the term "Gas Generator Major Shop Inspection." The wide disparity in the definite item bid prices led the Coast Guard to suspect that, notwithstanding the clear enumeration of all the required overhaul tasks in the standard specification, different bidders may have read the term "Gas Generator Major Shop Inspection" as requiring performance of different combinations of the enumerated tasks. The Coast Guard believed the fact that Airwork Corporation (Airwork), the firm which ordinarily performs EMC's major shop inspection work, bid \$9,000 more than EMC on the definite item further supported its suspicion that bidders were confused by the schedule. As a result of this perceived ambiguity, the Coast Guard was unsure whether an

award based on the original IFB would meet the government's actual needs, and thus canceled the IFB and issued a new solicitation with all of the overhaul tasks from the standard specification now specifically listed under the definite item.

EMC maintains that since the specification attached to the solicitation fully apprised bidders of the work to be performed, the IFB, read as a whole, was not ambiguous. EMC asserts that its bid was based on all tasks described in the specification and argues that it thus was entitled to the award under the original IFB. We agree.

A contracting officer must have a compelling reason to cancel an IFB after bid opening. Federal Acquisition Regulation, 48 C.F.R. § 14.404-1(a)(1) (1984); Dyneteria, Inc.; Tecom, Inc., B-210684, B-210684.2, Dec. 21, 1983, 84-1 C.P.D. ¶ 10. While IFB specification deficiencies may constitute a compelling reason to cancel, cancellation on this ground generally is not justified except where an award under the ostensibly deficient IFB would not satisfy the government's actual needs, or would prejudice other bidders. American Mutual Protective Bureau, 62 Comp. Gen. 354 (1983), 83-1 C.P.D. ¶ 469. Neither exception has been established here.

A contract award will satisfy an agency's needs, essentially, even in the face of some solicitation deficiency, where bidders can be said to have offered to perform the work actually required by the agency. We do not believe an agency's mere failure to include on a bid schedule every task already enumerated in an attached standard specification automatically renders an IFB so ambiguous as to support a conclusion that bidders were not offering to be bound to perform all the required tasks. Here, while the schedule alone may not have reflected all required tasks, it is undisputed that the remainder of the IFB and the attached specification did set forth these tasks. Thus, viewing the IFB as a whole, see JVAN, Inc., B-202357, Aug. 28, 1981, 81-2 C.P.D. ¶ 184, the IFB fully set forth the Coast Guard's requirements. Listing all of the required tasks on the schedule might make the IFB clearer, but the IFB as originally issued, read together with the standard specification, was sufficient to assure that bidders understood what they were bidding on and thus, that an award to EMC would satisfy the Coast Guard's actual needs as reflected in the specification.

Because we do not believe the IFB was materially deficient, we do not believe other bidders would be prejudiced by an award to EMC. Prejudice would exist only if the IFB contained some deficiency which prevented bidders from competing on the same basis. We already have found that the IFB, read as a whole, set forth the Coast Guard's actual requirements with sufficient clarity that all bidders should have been aware that their bid prices on the definite item bound them to perform all of the tasks in the attached standard specification. In order to be misled by the schedule into bidding on less than all of the required work, a bidder literally would have had to ignore the attached specification. Such a selective reading of the IFB would have been unreasonable, and thus would not be a sufficient basis for a finding of prejudice.

As to the evidence that the Coast Guard relied on, the fact that widely disparate prices were bid, by itself, does not establish that bidders were bidding to perform different portions of the required work. The Coast Guard has furnished us neither its own estimated cost for this procurement, nor data indicating the historical cost for meeting this requirement, and has neither asserted nor shown that this omitted information is inconsistent with EMC's bid or the range of bids, generally. No firm, including the 2 protesters here, ever complained of confusion as to what tasks were encompassed by the term "Gas Generator Major Shop Inspection." Further, while the Coast Guard bases much of its suspicion of confusion on the 500 percent range of bid prices on the definite item, we note that there is a similar 450 percent disparity in the prices bid on the indefinite item. Since these prices were merely the total prices for all of the listed parts, there is no reason to believe bidders were materially confused in calculating their indefinite item prices. In addition, we consider it significant that the bidders' definite item prices bear a relatively constant relation to the bidders' indefinite item prices. These considerations suggest to us that, contrary to the Coast Guard's view, the overall disparity of prices was not attributable to confusion over what work was required.

We also do not think the Coast Guard's suspicion concerning the difference in the EMC and Airwork bids was a sufficient basis for assuming there was confusion over the schedule. Neither firm had complained it was confused and, given the disparity in the bid prices generally, it is not

Because Turbine's protest challenges the specifications of the resolicitation, and we are recommending that award be made under the original IFB, Turbine's protest is dismissed as academic. See Phil Con Corp., B-207082, July 23, 1982, 82-2 C.P.D. ¶ 70.

EMC's protest is sustained; Turbine's protest is dismissed.

for *Harry R. Van Cleave*
Comptroller General
of the United States