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DECISION



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

FILE: B-219359; 219359.3

DATE: August 15, 1985

MATTER OF: R. J. Mack Company

DIGEST:

Where contracting agency determines that its needs have been overstated and can be satisfied by a significantly less expensive alternative than that specified in invitation for bids (IFB), a cogent and compelling reason exists to cancel the IFB after bid opening.

R. J. Mack Company (Mack) protests the cancellation of invitation for bids (IFB) No. N62472-85-B-1453 by the Northern Division, Naval Facilities Engineering Command, Department of the Navy, for the procurement of various underhung cranes, jib cranes and monorails for a submarine base.

We deny Mack's protest of the cancellation (B-219359.3) and, accordingly, dismiss its earlier protest (B-219359) premised on our finding the cancellation proper.

The IFB was issued as a 100 percent small business set-aside. The Navy reports receiving three bids as follows:

Westmont Industries	\$4,492,321.00
Pittsburgh Design Services	\$8,990,243.00
R. J. Mack Company	\$9,228,000.00

Mack filed a protest with this Office (B-219359), alleging that the two lower bids were nonresponsive for failing to indicate clearly that a small business concern would manufacture or produce all the supplies to be furnished under the contract. Mack also alleged that Pittsburgh Design Service's bid impermissibly did not include a bid bond.

The Navy canceled the IFB, maintaining that the specifications were ambiguous and that the Federal Acquisition Regulation (FAR) provides for cancellation of an IFB after bid opening under such circumstances. 48 C.F.R. § 14.404-1(c)(1) (1984).

Specifically, the Navy explains that the specifications require "design calculations" to be furnished for all mechanical elements of the cranes, including certain hoists. However, another section of the specifications states that "detailed shop drawings" are required for all parts of the crane except "purchased" mechanical components. As the hoists would most likely be purchased from another supplier, the Navy contends that the IFB was ambiguous in placing the contractor in the "unusual position" of being required to supply design calculations but not detailed shop drawings for the same mechanical component. Furnishing the design calculations would likely require the contractor to purchase proprietary information from the hoist supplier at significant expense. The Navy reports that its actual intention was to exempt the contractor from the requirement to furnish design calculations for purchased crane components.

In its second protest to this Office (B-219359.3), Mack challenges the cancellation. The protester maintains that the issue of ambiguous specifications depends on an objective reading thereof and not on the Navy's subjective intent. In this regard, Mack argues that the requirements for shop drawings and design calculations are complementary, not mutually exclusive, and, therefore, unambiguous.

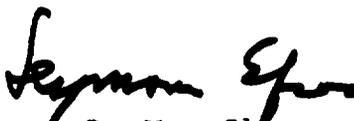
Based on our review of the record, even assuming the specifications are not ambiguous, we find adequate support to justify the Navy's cancellation of the IFB.

In addition to permitting cancellation of an IFB after bid opening where specifications are ambiguous, the FAR also allows for cancellation where the contracting officer determines that the bids received indicate that the needs of the government can be satisfied by a less expensive article differing from that for which the bids were invited. 48 C.F.R. § 14-404-1(c)(5). We have held that such a determination relating to an overstatement of an agency's minimum needs constitutes a cogent and compelling reason justifying cancellation of an IFB after bid opening. See Jarrett S. Blankenship Co., B-211582, Oct. 31, 1983, 83-2 CPD ¶ 516 at 2-3; Deere & Co., B-206453.2, Nov. 1, 1982, 82-2 CPD ¶ 392 at 3.

In this case, the record shows that the contracting officer effectively determined that the government's needs had been materially overstated and could be satisfied less expensively by not requiring design calculations for purchased crane components. First, as mentioned above, the contracting officer reported that it was not the government's intention to require design calculations for purchased crane components; thus, the government's needs could obviously be satisfied by not requiring these calculations. Second, the contracting officer determined that significant additional costs would be incurred by requiring these design calculations. This determination was based on the fact that Westmont Industries did not include the cost of purchasing proprietary design calculations in its low bid. Westmont reported to the Navy that the inclusions of such cost would have increased its bid by \$2,000,000. Moreover, the bids of both Pittsburgh Design and Mack, which admittedly included the costs of furnishing the required design calculations, were more than twice the amount (\$4,425,500.00) of the government estimate. The protester does not rebut the agency's position that the costs attributable to this requirement are significant or that the requirement is unnecessary. Thus, the contracting officer had sufficient reason to determine from the bids received that the government's needs could be satisfied at less expense by not requiring the unnecessary design calculations for purchased crane components.

Absent proof that this determination was arbitrary or capricious or not supported by substantial evidence, we will not disturb the contracting officer's resulting decision to cancel the IFB. See Andrew Corp., et al., B-217024, et al., Mar. 25, 1985, 85-1 CPD 344 at 7-8.

We therefore deny Mack's protest of the cancellation of the IFB, and accordingly hereby dismiss as academic its earlier protest concerning the bids received thereunder. Oregon Typewriter and Recorder Co., B-200890, May 22, 1981, 81-1 CPD ¶ 405 at 4.

for 
Harry R. Van Cleve
General Counsel