

DECISION

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

FILE: B-219453.2 **DATE:** December 10, 1985
MATTER OF: Emerald Maintenance, Inc.

DIGEST:

An invitation for bids may be canceled after bid opening and the exposure of bid prices when a compelling reason exists for doing so. A specification that overstates the agency's needs and results in a wide disparity of prices indicating that one or more bidders may have been misled by ambiguities in the specification constitutes a compelling reason for cancellation and resolicitation.

Emerald Maintenance, Inc. protests the cancellation of invitation for bids (IFB) No. N62471-85-B-2037, issued by the Department of the Navy to obtain maintenance services for family housing in Hawaii. Emerald, the incumbent contractor, contends that the cancellation was arbitrary, capricious and an abuse of discretion.

We deny the protest.

As a preliminary matter, we point out that Emerald filed an earlier protest on this same procurement. There, Emerald contended that the IFB was defective in 13 areas. The Navy's report on the protest indicated that 8 of those defects had been corrected by amendments but defended the propriety of the other alleged defects. When Emerald failed to submit its comments on the report or ask in writing for a decision on the basis of the record then existing, we dismissed the protest on August 26, 1985, in accordance with our Bid Protest Regulations, 4 C.F.R. § 21.3(e), (1985).

The stated intention of the IFB was to obtain family housing maintenance services by means of a combination of a firm-fixed-priced lump sum and an indefinite quantity contract. The IFB asked for lump sum prices to perform all specified work except for that included in the indefinite quantity portions of the contract for the base

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and two option years. The bidder was also asked to provide prices for labor and materials to perform the "Unit Priced Tasks" in the schedule for indefinite quantity work. These quantities were estimates provided solely for the purpose of bid evaluation and to establish the penal sum for any required bonds. The IFB further stated that for purposes of award, the low bidder would be the "conforming, responsive, responsible bidder offering the lowest total price" for the lump sum and indefinite quantity portions for the base and the two option years.

The bids were opened on August 12 and the prices of the four bidders ranged from about \$12.5 million to Emerald's price of about \$48.5 million. Because of this wide disparity and the fact that the Navy's estimate was about \$45.5 million, the Navy reviewed its actual needs against the specifications. The Navy concluded that the specifications seriously overstated the number of work orders to be issued under the lump sum portion of the contract for the repair and maintenance of the living quarters. This was due to the fact that certain work that had been expected to be performed in occupied quarters could actually be performed in vacant quarters. According to the Navy, the specifications also failed to reflect that a significant number of living quarters had recently been renovated and would not require much work during the new contract term. In addition, the Navy asserted that the disparity in the bid prices was due to the solicitation's not being definite enough for a bidder to price it accurately without experience in performing the work.

The Navy believed that these factors constituted a compelling reason to cancel the IFB and notified all bidders of the cancellation by a letter of August 26. The letter stated that the cancellation was necessary because of significant changes in the government's requirements.

Emerald argues that there was no compelling reason warranting the cancellation because, aside from the change in the schedule format for the bid prices, the revised solicitation does not significantly differ from the requirements of the canceled IFB. Emerald further argues that the disparity in the bid prices did not result from a defective IFB but from the negligence and lack of diligence of the other bidders in evaluating the IFB properly before submitting their bids.

The Federal Acquisition Regulation (FAR) provides that the preservation of the integrity of the competitive bidding system requires that after bid opening, award

must be made to the responsible bidder with the lowest, responsive bid, unless there is a compelling reason for not doing so. 48 C.F.R. § 14.404-1(a)(1). Inadequate or ambiguous specifications can be one of the bases on which a contracting officer may determine to cancel a solicitation after bid opening. 48 C.F.R. § 14.404-1(c)(1). The use of inadequate or ambiguous specifications, however, does not itself provide a compelling reason to cancel and resolicit if acceptance of a bid will satisfy the government's needs without prejudice to any bidder. Dunlin Corp., B-207964, Jan. 4, 1983, 83-1 CPD ¶ 7. Whether the circumstances warrant cancellation is for the determination of the contracting officer whose decision will not be disturbed by our Office unless it was arbitrary, capricious or not supported by substantial evidence. Jackson Marine Cos., B-212882, Apr. 10, 1984, 84-1 CPD ¶ 402; Chamberlain Mfg. Corp., B-209187, Mar. 10, 1983, 83-1 CPD ¶ 243.

Based on the record here, we cannot say that the contracting officer acted unreasonably in canceling the solicitation. The revised IFB (N62471-85-B-2543) reflects a thorough review of the Navy's needs and in our opinion, contains a number of significant changes.

For example, the first IFB required the contractor within 10 calendar days of the award to submit for the approval of the contracting officer an inspection schedule showing a minimum of 25 percent of the housing being inspected in each of the first 4 months of the contract. The new IFB requires the schedule within 15 days and stretches the inspection schedule over the 12 months of the contract by requiring only 8 percent of the housing to be inspected each month. Further, as a result of the Navy's finding that the recent renovation of many of the housing units reduced the probable need for repair and maintenance during the contract term, the new IFB reduces the estimated number of routine service calls taking over 16 hours from 12,000 to 4,500, and transfers them from the lump sum portion to the indefinite quantity portion of the contract. In addition, the new IFB greatly expands the description of the required continuously-manned work reception desk and includes a requirement that the desk be manned by an employee with the authority to act for the contractor.

In any event, we think that the wide disparity in the bid prices could reasonably be attributed to an ambiguous solicitation rather than to the negligence or lack of effort by the other bidders. Only the Navy and

Emerald had recent day-to-day experience with the specific work to be performed and Emerald concedes that the other bidders were experienced in bidding for and performing government contracts for the maintenance and repair of government buildings. Yet the prices bid by the other bidders ranged from \$33 million to \$19 million below the Navy's estimate of about \$45 million. Even Emerald protested on grounds that the IFB was unclear and inadequate and only 8 of the 13 deficiencies it identified were changed by amendments prior to the cancellation. We think that these factors reflect an ambiguous IFB and the probability that one or more bidders had been misled as to what was actually required, thereby warranting the cancellation. See Winandy Greenhouse Co.--Reconsideration, B-208876.2, Dec. 20, 1984, 84-1 CPD ¶ 2.

Emerald also cites our decision in Energy Maintenance Corp.; Turbine Energy Services Corp., 64 Comp. Gen. 425 (1985), 85-1 CPD ¶ 341, where we sustained a protest on the grounds that no compelling reason justified the cancellation when award under the IFB would have met the needs of the government without prejudice to the other bidders. The IFB in that case when read as a whole with the attached specification set forth all of the required tasks even though the schedule itself did not reflect each and every task. We held that this was not a material defect and that neither this nor the wide disparity in the bid prices from which the agency perceived an ambiguity and suspected that the bidders may have been confused was sufficient to justify the cancellation. There was no contention in that case, as there is here, that the IFB overstated the needs of the agency and no firm including the two protesters, had complained of confusion. In the case at hand, the agency had more than a suspicion that the bidders were confused because two of the four bidders, including the low bidder and the protester, had complained that the IFB was misleading and in need of correction and clarification.

The protest is denied.

for *Seymour E. Gross*
Harry R. Van Cleve
General Counsel