

DECISION

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

FILE: B-220613 **DATE:** February 5, 1986
MATTER OF: ADAK Communications Systems, Inc.

DIGEST:

Cancellation, after bid opening, of invitation for bids to provide radio repair and maintenance services, because of discrepancies in the amount of radios to be serviced, is unreasonable where award would result in satisfying the government's needs and would not prejudice bidders.

ADAK Communications Systems, Inc. (ADAK), protests the Department of the Air Force's post-bid opening cancellation of invitation for bids (IFB) No. F41800-85-B-8322. ADAK, the low bidder, requests that the IFB be reinstated and that it be awarded the costs of preparing its bid and pursuing its protest with this Office. The protest is sustained, but the request for reimbursement of the protester's costs is denied.

The IFB involved the maintenance and support of fixed, mobile and portable radios on-site at Kelly Air Force Base, Texas, in government-furnished facilities. Section B of the solicitation asked for fixed monthly prices to provide routine maintenance services for a specific quantity of radios listed by type and location under 20 line items. The IFB also requested unit prices to provide an indefinite quantity of other services, such as emergency repairs, as required by the Air Force. Section C of the IFB contained an inventory of the radios to be serviced.

After bid opening, the second low bidder filed a protest with the Air Force alleging that the specifications were defective because of an inconsistency between sections B and C of the IFB. Specifically, one of the maintenance items listed in section B covered a fixed quantity of 15 portable radios while section C listed 150 portable radios at the location covered by the item; another maintenance item in section B stated a fixed-quantity of 75 portable radios while section C listed 160. (A few other items contained minor discrepancies of 3 or less radios.) The IFB provided that section B took precedence over section C. Because the Air Force decided that section B of the IFB did not accurately reflect the Air Force's need for services for

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the larger quantities of equipment specified in section C of the IFB, the Air Force determined to cancel the IFB and resolicit.

The Air Force contends that section B, with its fixed quantities of radios, would have obligated the contractor to maintain only the lesser quantities of portable radios specified in section B, and that it would have been improper to award the contract with the intention of subsequently adding additional requirements. The Air Force asserts that the discrepancy is significant, and points out that factoring ADAK's unit prices with the correct quantities of radios would increase ADAK's bid by more than one-third. The Air Force also asserts that it needs a requirements contract for the maintenance services, rather than a fixed-quantity type of contract.

ADAK contends that none of the bidders was prejudiced by the inconsistencies, and the Air Force could have met its needs by awarding the contract under the IFB. In this regard, ADAK asserts that bidders were on notice that they would have to maintain all the radios of a given type under the solicitation. The protester further points out that the quantities stated in section B can be adjusted through use of the "Additions or Deletions of Equipment" clause of the IFB which provides for the addition or deletion of equipment with accompanying cost adjustments to be based on the contractor's specified monthly prices. ADAK states that the discrepancy between sections B and C was therefore a mere technical deficiency that did not prejudice the bidders.

Because canceling an IFB after bid opening might adversely impact the integrity of the competitive sealed bidding system, a procuring agency must have a compelling reason to cancel an invitation after bid opening. Feinstein Construction, Inc., B-218317, June 6, 1985, 85-1 CPD ¶ 648. We have held that the use of specifications which do not adequately describe the government's actual needs generally provides a compelling reason to cancel a solicitation. Flight Refueling, Inc., B-216709, May 13, 1985, 85-1 CPD ¶ 536. Cancellation is improper, however, where no bidder was prejudiced by the discrepancy and the government would fulfill its needs through the award of the contract. Twehous Excavating Company, Inc., B-208189, Jan. 17, 1983, 83-1 CPD ¶ 42.

We find that the cancellation of this solicitation was not proper because no bidder was prejudiced by the discrepancy and the government could have met its needs through award of the contract. Although section B, which required the contractor to maintain fixed quantities of base station, mobile, or portable radios at several locations, specifically stated that section C listed an inventory of the equipment, there were large discrepancies between sections B and C regarding the quantity of equipment to be maintained. While in many cases solicitation inconsistencies may mislead bidders or not accurately reflect the government's actual needs, such that solicitation cancellation is appropriate, we believe such a situation does not exist here. First, in our judgment, these discrepancies were of such a magnitude--in one instance a factor of more than 10--that they were patent and bidders were therefore on notice of the discrepancies. No bidder complained prior to bid opening. Second, the bids were based on monthly unit prices per radio to be serviced, and there is no indication that any bid price per radio would have been different depending upon the actual quantity to be serviced. In fact, bidders were on notice that the government's needs could be met through the use of the "Addition or Deletion of Equipment" clause. Finally, when the correct quantities for these items are used in evaluating prices, the low bid is not displaced. Consequently, we do not believe that bidders were prejudiced by the inconsistencies, or that cancellation was necessary. See Douglas County Aviation, Inc. et al., B-213205 et al., Sept. 27, 1985, 64 Comp. Gen. ____, 85-2 CPD ¶ 345; Central Texas College System, B-215172, Feb. 7, 1985, 85-1 CPD ¶ 153.

Regarding the Air Force's alleged need for an indefinite-quantity requirements contract, we note that the IFB already requires the contractor to provide everything necessary to maintain the fixed quantity of radios, and provides for fluctuations in the Air Force's inventory through the "Addition or Deletion of Equipment" clause. The Air Force, aside from merely stating that it needs a requirements contract, has not shown that the current IFB fails to describe its needs adequately.

The protest is sustained. The IFB should be reinstated and the contract awarded to ADAX.

The protester requests reimbursement of its bid preparation costs and the costs of filing and pursuing the protest, including reasonable attorney's fees. The recovery of bid preparation costs is not appropriate where this

Office recommends that the protester receive, or be considered for the contract award. See Bendix Field Engineering Corp., B-219406, Oct. 31, 1985, 85-2 CPD ¶ 496. Regarding the costs of filing and pursuing the protest, our regulations permit the recovery of such costs where the protester unreasonably is excluded from the procurement, except where, as here, we recommend that the contract be awarded to the protester. 4 C.F.R. § 21.6(e) (1985); Bendix Field Engineering Corp., supra. The thrust of our regulations is that the recovery of costs should be allowed only where the protester did not receive a fair opportunity to compete for the award, and that where the protester obtains the award as a result of our recommendations, the award is a sufficient remedy in itself. Since we recommend award to the protester, the award of costs is inappropriate.

for 
Comptroller General
of the United States