



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Aero-Executive Helicopters  
File: B-227133  
Date: August 17, 1987

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### DIGEST

Compelling reason exists for canceling a brand name or equal invitation for bids after opening where the invitation fails to include certain requirements the agency deems material and necessary to meet its needs and also overstates certain of the agency's minimum needs so that it may have restricted competition.

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### DECISION

Aero-Executive Helicopters protests the cancellation of invitation for bids (IFB) No. 807-17, issued by the Department of the Interior, and the subsequent resolicitation of the requirement. The agency issued the original solicitation to obtain helicopter flight services for use by the National Park Service at Yosemite National Park, California, but canceled it after bid opening, after determining that the specifications were defective. The protester contends that the IFB deficiencies cited by the agency do not constitute a compelling reason to cancel and that the resolicitation did not significantly modify the original solicitation. The protester, the low bidder on the original IFB, seeks award under that IFB or, in the alternative, reimbursement of its bid preparation costs and the costs of filing and pursuing the protest. We deny the protest and the request for costs.

The original solicitation listed "Aerospatiale AS-355F or AS-350 B-1, or equal" as the types of helicopters that would meet the requirements of the solicitation, when equipped in accordance with the specifications. The solicitation listed five minimum aircraft performance requirements such as cruising airspeed, type of engine, and horsepower, and also listed equipment and accessories required for the helicopter.

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The agency received eight bids, with Aero-Executive the apparent low bidder. After bid opening Aero-Executive confirmed its intent to provide a Bell 206L-3 helicopter. Interior determined that the Bell 206L-3 lacked the horsepower required by the solicitation, and although the agency subsequently found that the Bell 206L-3 could perform in accordance with the remaining specifications, it also found that the cabin configuration and flooring of the Bell 206L-3 were not suitable for rappelling operations (for which the helicopter was to be used). At the same time, Interior determined that the stated horsepower was unnecessary (since there is no correlation between horsepower and performance), and that the 10-day start-up time should be relaxed to 20 days (since substantial equipment was to be added to the helicopters for performance). Interior concluded that the specifications were defective since they did not adequately describe the minimum needs of the government in these areas, and thus canceled the solicitation.

The revised solicitation added the "Boelkow BO-105 CBS, or equal" as an acceptable model; added as salient characteristics: (1) a flat nonrecessed passenger cabin floor and (2) a seating arrangement requiring a reversible copilot seat (to facilitate viewing of rappelling operations); extended the commencement of performance from 10 to 20 days after award; and deleted the horsepower requirement.

Aero-Executive maintains that the modifications made by the revised solicitation are minor and do not affect the price, quality, or quantity of the services requested. Furthermore, Aero-Executive maintains that award to it would have met the government's needs since its offered helicopter meets or exceeds all specifications in both the original and revised solicitations. Specifically, Aero-Executive states that its offered helicopter could easily be modified to utilize a flat floor in the passenger area without significant cost or delay; that its helicopter met the horsepower requirement; and that it was prepared to begin performing within 10 days after award. Aero-Executive questions the reversible seat requirement on the ground that there are no windows in the helicopter from which to view the rappelling operations.

Although a contracting officer has broad discretion to cancel an IFB, he must have a compelling reason to do so after bid opening because of the potential adverse impact on the competitive bidding system of cancellation after bid prices have been exposed. Alliance Properties, Inc., 64 Comp. Gen. 854 (1985), 85-2 CPD ¶ 299. As a general rule, the need to change the requirements after the opening of bids to express properly the agency's minimum needs constitutes such a compelling reason. Id. Our Office

generally regards cancellation after opening to be appropriate when an award under the ostensibly deficient solicitation would not serve the actual minimum needs of the government or when other bidders would be prejudiced by such an award. United States Elevator Corp., B-225625, Apr. 13, 1987, 87-1 CPD ¶ 401. Our review is limited to considering the reasonableness of the exercise of the contracting officials' discretion. Motorola, Inc. et al., B-221391.2, et al., May 20, 1986, 86-1 CPD ¶ 471.

We find that the record establishes a compelling reason to cancel on the basis of the failure to include the salient characteristics required to meet the agency's rapelling needs and the overstatement of its needs concerning commencement of performance and horsepower. The original solicitation did not include, as either minimum or salient requirements, the flat passenger cabin floor or the mandatory reversibility of the co-pilot's seat. While it is not clear from the record precisely how significant these features are from a structural or cost standpoint, it appears that what the modifications entailed--installing a different passenger cabin floor and reconfiguring the seating--could have a substantial effect on a bidder's price. Although the protester argues that the modifications would not affect price and therefore are minor, it has not furnished us with information as to how it would accomplish them or how much cost would be involved.

In any case, we think the cancellation was justified on the basis that the original IFB overstated Interior's needs regarding the original start-up time and the horsepower requirement. We view the start-up time as analogous to a delivery schedule or time for performance, both of which generally are material factors in a solicitation that likely will affect price. Pierce Mfg., Inc., B-224007, Oct. 28, 1986, 86-2 CPD ¶ 483. The more restrictive start-up time in the original solicitation not only may have affected other bidders' prices to various degrees, but also may have precluded some potential bidders from bidding due simply to the unavailability of their aircraft within the 10-day start-up period. See Pride Container Corp., B-224678, et al., Jan. 16, 1987, 87-1 CPD ¶ 66. Similarly, the horsepower requirement--presented in the IFB as an absolute requirement--clearly could have dissuaded potential bidders from competing based on their inability to meet the requirement. See Motorola, Inc. et al., B-221391.2, supra.

Given these circumstances, cancellation of the original IFB was proper since an award thereunder would not have assured performance in accordance with all of the agency's actual needs and, regardless of whether Aero-Executive could have

satisfied the needs of the agency, clearly could have prejudiced other bidders and potential bidders.

Because we deny the protest, Aero-Executive is not entitled to its bid preparation costs or the costs of pursuing the protest. 4 C.F.R. § 21.6(d) (1987).

The protest and request for costs are denied.

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