



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## Decision

**Matter of:** Bill McCann  
**File:** B-234199.2; B-234856  
**Date:** June 13, 1989

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### DIGEST

1. Cancellation of solicitation after bid opening is proper where agency reasonably concludes that solicitation does not include significant additional requirements and therefore no longer meets the government's actual needs.
2. Although original solicitation for construction services was set aside for small businesses, agency did not act improperly in resoliciting on an unrestricted basis after cancellation of first solicitation where resolicitation was undertaken after the January 1, 1989, effective date of the Small Business Competitiveness Demonstration Act of 1988, which generally provides for procurement of the required services on an unrestricted basis.

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### DECISION

Bill McCann, Inc., protests the cancellation of invitation for bids (IFB) No. FO2600-88-B-0029 and the resolicitation of the requirement under IFB No. FO2600-89-B-0014, issued by the Department of the Air Force for the renovation of approximately 250 military housing units at Williams Air Force Base, Arizona. We deny the protest.

The original solicitation was issued on October 28, 1988, as a total small business set-aside. At the December 29 bid opening, Combined Builders was the low eligible bidder at \$5,780,693, and McCann was next low at \$5,997,810. After bid opening, however, the base requested that the required work be changed to add the replacement of the bathroom tubs and lavatories. The contracting officer deemed the changes in the requirements substantial enough to warrant cancellation and, accordingly, canceled the solicitation on January 31. McCann thereupon filed a protest with our Office challenging the cancellation and the acceptability of

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Combined Builders' bid bond sureties. On February 27, the Air Force resolicited the requirement on an unrestricted basis under IFB -0014; prior to bid opening McCann filed a second protest with our Office, arguing that any resolicitation should be set aside for small business concerns.

McCann does not dispute that the additional work is actually part of the agency's needs. Rather, McCann contends that the contracting officer lacked a compelling reason to cancel the IFB as required by Federal Acquisition Regulation (FAR) § 14.404-1(a)(1) after bids have been opened. McCann claims that new work would amount to only \$200,000 to \$300,000, a small percentage of the contract (bids were between five and six million dollars), and that the appropriate action would have been simply to acquire this work under a new, separate solicitation. In this regard, McCann cites FAR § 14.404-1(a)(3), which provides that:

"As a general rule, after the opening of bids, an invitation should not be canceled and resolicited due solely to increased requirements for the items being acquired. Award should be made on the initial invitation for bids and the additional quantity should be treated as a new acquisition."

The Air Force maintains that cancellation was the proper course of action due to the scope of the added requirement and the high dollar value of the revisions, which it estimates at \$550,000. According to the agency, the replacement of tubs and lavatories is an integral part of the renovation and could not have been contracted for separately, as a practical matter, without having two separate prime contractors working at the same site, with resulting inspection and warranty problems; the agency wanted a single contractor responsible for coordinating the entire effort.

Because of the potential adverse impact on the competitive bidding system of cancellation after bid prices have been exposed, a contracting officer must have a compelling reason to cancel an IFB after bid opening. FAR § 14.404-1(a)(1); Donco Industries, Inc., B-230159.2, June 2, 1988, 88-1 CPD ¶ 522. At the same time, however, the determination as to whether such a compelling reason exists is an administrative one that we will not disturb absent a showing that it was unreasonable. Independent Gas Producers Corp., B-229487, Mar. 2, 1988, 88-1 CPD ¶ 217. In this regard, we generally consider cancellation after bid opening to be appropriate when an award under the solicitation would not serve the

actual minimum needs of the government. Instrument & Controls Service Co., B-231934, Oct. 12, 1988, 88-2 CPD ¶ 345, aff'd, Instrument & Controls Service Co.--Request for Reconsideration, B-231934.2, Nov. 4, 1988, 88-2 CPD ¶ 441.

As a preliminary matter, we disagree with McCann's view that the changes in the work are insignificant. Whether the cost of the additional work is \$200,000 to \$300,000, as McCann alleges, \$550,000 as the agency estimates, or something in between, we think the amount is significant, especially in the context of this procurement, where the bids were only approximately \$200,000 apart. Moreover, the mere dollar value of the work is not determinative of its significance here. The need to coordinate replacement of the bathroom tubs and lavatories with the other work is apparent. For example, if the bathrooms were otherwise renovated first, the renovated areas could be disturbed when the bathroom fixtures were subsequently replaced. If, on the other hand, the bathroom fixtures were replaced first, the other renovation work in a particular unit could be delayed pending installation of the new fixtures. Moreover, we think the agency could reasonably expect that if more than one prime contractor were employed, disputes as to the responsibility for delays, final completion, and repairs under warranty would be more likely.

We find the Air Force's approach to procuring this additional work unobjectionable. When an agency issues a solicitation for construction work and after bid opening learns that its needs exceed those stated in the IFB, it is not unreasonable for the agency to cancel the solicitation and resolicit all the work together to assure that all work at the particular site will be performed under one contract; the agency is not required to award a contract under the defective IFB and then issue a new solicitation for the additional work. Feinstein Construction, Inc., B-218317, June 6, 1985, 85-1 CPD ¶ 648. The regulation McCann cites, FAR § 14.404-1(a)(3), which generally precludes an agency from canceling an IFB after bid opening due to increased requirements, applies where an agency is procuring the supply of items and not where, as here, the agency is procuring services needed to perform specified work. Id.; see American Television Systems, B-220087.3, June 19, 1986, 86-1 CPD ¶ 562.

McCann alleges that the agency made a conscious decision prior to issuing the original solicitation not to include new bathroom fixtures due to a lack of funds, and therefore should not be permitted to add the work at this juncture. The record shows, however, that the contracting officer apparently became aware of the additional work after he

issued the solicitation. Moreover, it long has been our position that information relating to whether there is sufficient reason to cancel a solicitation can be considered no matter when the information justifying the cancellation first surfaced or should have become known. Independent Gas Producers Corp., B-229487, supra; see Donco Industries, Inc., B-230159.2, supra.

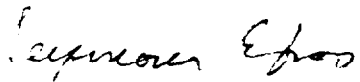
McCann believes cancellation was not the proper course of action here since it will result in an auction. The mere fact that prices have been exposed, however, does not preclude cancellation and resolicitation; resolicitation does not create an impermissible auction where the original post-bid opening cancellation of an IFB was otherwise proper. Duracell, Inc., et al., B-229538, et al., Feb. 12, 1988, 88-1 CPD ¶ 145.

McCann also argues that issuance of the new solicitation on an unrestricted basis was improper, since the original solicitation was set aside for small businesses. We disagree. The Small Business Competitiveness Demonstration Program Act of 1988, P.L. 100-656, 102 Stat. 3889, 3892, provides that solicitations of certain agencies, including the Department of Defense (DOD), issued on or after January 1, 1989, for acquisitions in any of four designated industry groups, including construction, and with an anticipated dollar value of more than \$25,000, generally shall be solicited on an unrestricted basis. DOD's implementing regulation provides that solicitations covered by the Act shall not be set aside unless otherwise directed. DOD Federal Acquisition Regulation Supplement (DFARS) § 219.1070-1 (54 Fed. Reg. 4247). Although McCann claims that the new solicitation was really only a continuation of the procurement under which the prior solicitation was issued, since the solicitation was issued after the January 1, 1989, effective date for implementation of the Act and sought bids for construction work expected to exceed \$25,000, we do not believe that the agency acted improperly in issuing it on an unrestricted basis.

Given our conclusion that the cancellation was proper, we need not consider McCann's allegation that the individual

sureties on the required bid bond submitted by Combined Builders are unacceptable.

The protest is denied.

  
James F. Hinchman  
General Counsel