

Ruppert



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Brener Building Maintenance Company Inc.

**File:** B-235370.2

**Date:** September 20, 1989

---

### DIGEST

Compelling reason to cancel invitation for bids after bid opening existed where invitation required bonding if "contract price/minimum" was \$25,000 or greater, thus rendering solicitation ambiguous; bidders reasonably could interpret solicitation as requiring bonding since bid prices were well above \$25,000, or as not requiring bonding since stated minimum order was only \$8,000, and bids received indicate different bidders adopted different interpretations.

---

### DECISION

Brener Building Maintenance Company Inc. protests the cancellation after bid opening of invitation for bids (IFB) No. N62472-89-B-1679, for refinishing fiberglass bathroom fixtures in housing units at the Naval Education and Training Center, Newport, Rhode Island. Brener, the apparent low bidder, contends it should have been awarded the contract because the Navy did not have a compelling reason to cancel the IFB. We deny the protest.

The IFB, issued on March 27, 1989, contemplated award of an indefinite quantity contract. The contract minimum amount to be ordered was \$8,000 and the maximum amount was to be determined by multiplying the maximum quantity for each item by the unit price bid. Bids were to be evaluated for purposes of award on the basis of aggregate prices for the maximum quantities stated for items one through eight. The IFB required a bid guarantee in the amount of 20 percent of the "contract price/minimum." Amendment No. 0001 to the IFB added the language "only if contract price/minimum is \$25,000 or greater" to the end of this provision. The minimum order under this solicitation was \$8,000.

At bid opening on March 27, four bids were received, ranging from \$99,500 to \$113,950. The government estimate was \$80,200. The first and second-low bidders did not furnish

046557/139605

bid bonds with their bids. Brener, the third-low bidder, and Tris Painting and Contracting, the fourth-low bidder, did submit bid bonds. The agency determined that the "contract price/minimum" reference rendered the solicitation ambiguous with regard to whether bonds were required, and actually had misled some bidders as to the bonding requirement. It thus canceled the solicitation with the intention of readvertising it without a bonding requirement.

Brener contends that the IFB clearly required bonding, and that there thus was no compelling reason to cancel the IFB, as required by Federal Acquisition Regulation (FAR) § 14.404-1(a)(1). Since the first and second-low bidders failed to submit bid bonds, Brener contends it was the low responsive bidder and should receive the award.

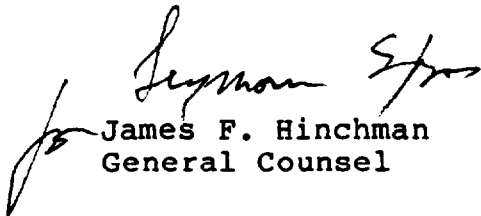
Contracting officers have broad discretion to determine whether appropriate circumstances for cancellation exist. Total Protech, Inc., B-233264, Feb. 28, 1989, 89-1 CPD ¶ 211. Consistent with this discretion, our Office will not question a contracting officer's decision to cancel unless it was arbitrary or unreasonable. Bay Shipbuilding Corp., B-231918, Sept. 30, 1988, 88-2 CPD ¶ 305. The FAR provides that IFBs may be canceled after bid opening when inadequate or ambiguous specifications were cited in the invitation or when cancellation is clearly in the government's best interest. FAR § 14.404(c)(1)-(9). We have held that specifications must be sufficiently definite and free from ambiguity so as to permit competition on a common basis. Hebco, Inc., B-228394, Dec. 8, 1987, 87-2 CPD ¶ 565. An ambiguity exists where two or more reasonable interpretations of a solicitation requirement are possible. See Flow Technology, Inc., B-228281, Dec. 29, 1987, 87-2 CPD ¶ 633.

We find that the Navy properly canceled the solicitation because the term "contract price/minimum" in the instruction to bidders and amendment 0001 created an ambiguity that apparently misled some bidders as to whether bid bonds were required. Specifically, we think "contract price" reasonably could be read as referring to the total bid price used to evaluate the bids for award, while "minimum" clearly referred to the \$8,000 minimum order under the contract. If a bidder considered the former term controlling, it would furnish bonds, since all bids far exceeded the \$25,000 threshold. If a bidder read the latter term as controlling, however, and applied the bond requirement to the stated \$8,000 contract minimum, it would not furnish a bond since the minimum did not exceed \$25,000.

While it is not immediately clear how any bidder could disregard one or the other term in preparing its bid, the

bids actually received nevertheless suggest that different bidders adopted different interpretations, and that this affected the competition. In this regard, the bids that included bonds were similar in price (\$112,950 and \$113,950), and were approximately 11 percent higher than the two bids that did not include bonds (\$99,500 and \$100,100). In cases such as this, where a solicitation requirement is unclear, with the result that bidders responded to it based upon different assumptions as to what the requirement was, the competition has been conducted on an unequal basis. Amdahl Corp., et al., B-212018 et al., July 1, 1983, 83-2 CPD ¶ 51. Under these circumstances, unless the IFB was canceled, clarified, and resolicited, the agency could not be certain that its needs would be met at the lowest price and that there was maximum competition on an equal basis. Accordingly, we do not think it was unreasonable for the agency to cancel the solicitation for the purpose of readvertising the work under terms that would make the government's requirements clearly understood.<sup>1/</sup>

The protest is denied.

  
James F. Hinchman  
General Counsel

---

<sup>1/</sup>Brener also takes issue with the agency's characterization of the contract type here as indefinite quantity rather than requirements; it is Brener's view that under its interpretation (i.e. requirements contract) bonding would be required and the two low bids would be nonresponsive for failure to include bonds. See Federal Acquisition Regulation § 28.102-2(c). Given our conclusion that the IFB was misleading and that cancellation was proper, this aspect of the protest is premature pending the resolicitation.