



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Integrated Measurements Systems, Inc.--
Reconsideration

File: B-243037.3

Date: October 30, 1991

William C. Campbell, Esq., Ater, Wynne, Hewitt, Dodson & Skerritt, for the protester, Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration of decision denying protest against cancellation of a negotiated procurement after proposals were received is denied where the requester does not present any evidence that its offered product would meet the minimum requirement expressed in the solicitation.

DECISION

Integrated Measurement Systems, Inc. (IMS) requests reconsideration of our decision in Integrated Measurement Sys., Inc., B-243037.2, Aug. 2, 1991, 91-2 CPD ¶ ___, which denied IMS' protest against the failure of Universities Research Association, Inc. (URA) to make award to IMS under request for quotations (RFQ) No. SSC-91-A-8308, for a digital integrated circuit evaluation system. IMS argues that our decision contains reversible legal errors, and that it should in any case be reimbursed its costs of pursuing the protest, including attorneys' fees and its proposal preparation costs.

We deny the request for reconsideration and claim for costs.

URA is an operations and management contractor of the Department of Energy (DOE) responsible for operating the Superconducting Super Collider Laboratory. On December 6, 1990, the RFQ was issued on a brand name or equal basis for a digital integrated circuit evaluation system. The Hewlett-Packard Company (HP) 82000 D100, the HP 82000 D200, and IMS' XL100 were identified in the RFQ as brand name products. The RFQ's specifications also set forth certain minimum requirements, i.e., salient characteristics, to be met by the digital integrated circuit evaluation system.

On December 21, URA received four quotes in response to the RFQ, including quotes from HP and IMS on their brand name products. URA determined that all proposed systems, except HP's, failed to meet the RFQ's minimum requirements, and thus rejected those quotes as technically unacceptable and made award to HP. After IMS protested URA's decision to reject its proposal and make award to HP, URA determined that HP's system also did not meet the RFQ's minimum requirements. On March 15, 1991, URA advised this Office that HP's subcontract had been terminated and the requirement would be resolicited. Further, URA reported that after reevaluating its requirements, it needed to revise the specifications in order to clarify ambiguities and add additional minimum requirements. Thus, we dismissed IMS' initial protest.

IMS then protested that URA improperly evaluated its quote, since it proposed to furnish its brand name product, which it argued was technically acceptable by definition, inasmuch as the brand name's model number was designated in the RFQ. IMS contended that since its proposal was acceptable and would meet URA's requirements, the RFQ cancellation was improper.

Our prior decision found that URA properly determined that IMS' system failed to meet material RFQ requirements and therefore IMS' quote was properly rejected as technically unacceptable. Further, we found that a government prime contractor conducting a negotiated procurement need only have a reasonable basis to cancel, and that URA had a reasonable basis since the solicitation was defective, in that it did not reflect the government's actual requirements and because all quotes received were technically unacceptable.

IMS does not dispute that part of the decision which found that URA properly determined that IMS' system was technically unacceptable under the RFQ. Instead, IMS contends that we made reversible legal errors in not properly considering certain arguments IMS made in its initial protest.

Under our Bid Protest Regulations, a party requesting reconsideration must show that our prior decision contains either errors of fact or law or that the protester has information not previously considered that warrants reversal or modification of our prior decision. 4 C.F.R. § 21.12(a) (1991).

IMS claims that our decision did not establish that any offeror was prejudiced or misled, or that any award under the RFQ would not satisfy the government's requirements. However, as discussed in our prior decision, URA reasonably found that deviations in IMS' offered product from the specified requirements were material and would not satisfy URA's requirements. IMS still does not dispute URA's finding that

no offeror met the expressly stated RFQ requirements, nor offered further evidence, on reconsideration, that its offered product otherwise satisfied URA's requirements.


A cancellation of solicitation on the basis of revised specifications is appropriate where award under the solicitation would not serve the government's minimum needs. Zwick Energy Research Org., Inc., B-237520.3, Jan. 25, 1991, 91-1 CPD ¶ 72. Since cancellation of a solicitation after proposals or bids are received is justified in such circumstances, there need be no further showing that offerors or bidders were prejudiced or misled by the solicitation. See Holk Dev., Inc., B-236765.2, Jan. 18, 1990, 90-1 CPD ¶ 65.

IMS also argues that the procurement was not negotiated, as we represented in our prior decision, but rather had all the markings of a sealed bid procurement, for which there must be more than a reasonable basis to cancel and resolicit after bids are opened. Since there was no public bid opening on this RFQ, it was most analogous to a negotiated procedure procurement and the agency only needed a reasonable basis to cancel. In any case, where award under a sealed bid procurement does not meet the government's requirements, there is a compelling reason to cancel the procurement, even after bids have been opened. See Zwick Energy Research, Inc., supra.

Finally, IMS claims the costs of quote preparation and pursuit of the protest. However, since IMS' protest was denied, it is not entitled to these costs. 4 C.F.R. § 21.6(d).

The request for reconsideration and claim for costs are denied.



 James F. Hinchman
General Counsel