



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

# Decision

**Matter of:** Comspace Corporation  
**File:** B-250863  
**Date:** January 5, 1993

I. Becker for the protester.  
Hugh J. Hurwitz, Esq., Department of Justice, Federal Bureau of Prisons, for the agency.  
Tania L. Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

Where agency initially listed a "suggested" source of supply for two items called for under invitation for bids (IFB) but subsequently canceled the IFB and issued a new solicitation which requires the use of the designated source, claim for cost of preparing bid submitted under the canceled IFB is denied since there is no evidence of bad faith or that the agency acted arbitrarily or capriciously in issuing the IFB.

## DECISION

Comspace Corporation protests the issuance of request for proposals (RFP) No. 1PI-0183-92, by Federal Prison Industries, Inc., d/b/a UNICOR, for various items of fastening hardware. Comspace complains that the RFP is a duplicate of a previous uncanceled solicitation, invitation for bids (IFB) No. 229PI-0015-92, under which it was the low bidder.<sup>1</sup> Comspace argues that the IFB was defective, as indicated by the terms of the RFP; consequently, Comspace claims it is entitled to recover its bid preparation costs.

We deny the claim for costs.

The IFB was issued on February 19, 1992, pursuant to a contract UNICOR held with the Department of the Army for battery boxes. The IFB required prices on four types of catches, locks, latches and strikes, and the necessary tooling for each item. The fasteners were to conform with various specifications and drawings included in the solicitation; the specifications and drawings for two of the line

<sup>1</sup>In its protest, Comspace erroneously referred to the IFB in question as IFB No. 1PI-0183/92.

items indicated that Simmons Fastener Corporation was the suggested source of supply for those line items. On the extended March 20 bid opening date, eight bids were received, including one from the protester. On June 5 the Army informed UNICOR that safety concerns dictated the sole use of Simmons fasteners for those two line items for which Simmons was listed as the suggested source of supply. UNICOR never completed an evaluation of the bids, and all bid acceptance periods expired on July 20.<sup>2</sup>

On both August 28 and September 3 UNICOR advertised a replacement procurement in the form of an RFP in the Commerce Business Daily; the listing specified Simmons as the sole source for two of the line items, with the remaining two line items available for full and open competition. The RFP was issued on September 11, with proposals due by October 14; Comspace was provided a copy of the solicitation but did not submit a proposal. Comspace filed this protest in our Office on October 13.

Comspace claims that, to the extent the IFB was defective for failing to list Simmons as the required source for two line items, as was done in the RFP, UNICOR should have known about the alleged defect when it issued the IFB. Accordingly, Comspace seeks to recover its bid preparation costs.

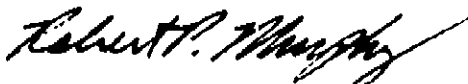
While we agree that agencies must draft specifications which adequately reflect their needs, the issue here is whether an agency should be required to pay the protester's bid preparation costs where the agency fails to do so and subsequently cancels the solicitation. The record shows that UNICOR prepared the specifications in good faith, and that it issued the IFB with the intent to award a contract. Although the protester alleges that UNICOR's decision to resolicit the requirement was based on facts which were available prior to the issuance of the IFB, the record clearly indicates that UNICOR was unaware of the Army's request that Simmons be the required source of two line items until June 5, well after the February 19 issuance of the IFB. Even if UNICOR were negligent in preparing the

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<sup>2</sup>The agency reports that it intended to cancel the IFB but, due to an internal reorganization, it inadvertently did not do so until November 5, when it canceled the IFB pursuant to Federal Acquisition Regulation (FAR) § 14.404-1. Under that section, an IFB may be canceled and all bids rejected after bid opening but before award when "[i]nadequate or ambiguous specifications were cited in the invitation," and "[f]or other reasons, cancellation is clearly in the public's interest." FAR § 14.404-1(c)(1) and (10).

IFB, such negligence or lack of diligence provides no basis on which to allow recovery of bid preparation costs where, as here, there is no indication of bad faith, or that the agency acted arbitrarily or capriciously. Special Sys. Servs., Inc., B-238168, Apr. 4, 1990, 90-1 CPD ¶ 359.

The claim for costs is denied.



*for* James F. Hinchman  
General Counsel