



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

436313

## Decision

**Matter of:** CFM Equipment Company

**File:** B-251344

**Date:** March 31, 1993

Leroy C. Chacon for the protester,  
Jean K. Orenstein, Esq., Department of Transportation, for  
the agency.  
Behn Miller, Esq., and Christine S. Melody, Esq., Office of  
the General Counsel, GAO, participated in the preparation of  
the decision.

### DIGEST

Agency may cancel a negotiated procurement based on the  
potential for cost savings.

### DECISION

CFM Equipment Company protests the cancellation of request  
for proposals (RFP) No. DTMA91-92-B-200092, issued by the  
Department of Transportation, Maritime Administration  
(MARAD), for heating equipment and related services required  
for the renovation of several buildings located at the  
United States Merchant Marine Academy. CFM contends that  
the cancellation was improper since the agency did not  
request a best and final offer (BAFO) from CFM prior to the  
cancellation determination.

We deny the protest.

### BACKGROUND

On August 4, 1992, the agency issued an invitation for bids  
(IFB) as a total small business set-aside. Under the IFB,  
bidders were required to complete and submit a 5-page pric-  
ing schedule containing multiple contract line item numbers  
(CLIN) which corresponded to the various types of heating  
equipment required in each building. The agency intended to  
furnish the equipment to the firm awarded an upcoming con-  
tract for upgrading the heating system at the Merchant  
Marine Academy; that contractor would be responsible for  
installing the equipment procured under the IFB here.

At the September 8 bid opening, CFM was the sole bidder. After comparing CFM's bid price to the government estimate, the contracting officer discovered that CFM's price exceeded the estimate by approximately 30 percent. Because of this discrepancy, the contracting officer suspected that there was a pricing mistake in CFM's bid; specifically, because several heating equipment manufacturers offer a dealer pricing discount of 25 to 50 percent for suppliers such as CFM, the contracting officer concluded that CFM had inadvertently failed to factor the applicable manufacturers' discounts into its price. Accordingly, the contracting officer asked CFM to review its bid for accuracy and to verify its bid price.

CFM responded that there was no mistake in its pricing. CFM explained that its higher bid price reflected the additional costs of providing several services required by the IFB, which--according to CFM--are normally provided by the installation contractor, not the equipment supplier. CFM identified these requirements as "Jobsite Supervision," (specifically, supervision of the equipment installation); certain "General Provisions" relating to the supplier's responsibility for operation of the equipment and related systems; and the requirement for a labor warranty in addition to the usual parts warranty. In this regard, CFM explained that the firm had incorporated an additional \$140,132 into its bid price to cover the firm's cost of providing these services.

In designing this procurement, the agency considered the jobsite, general provisions and warranty services identified by CFM to be "incidental" services ordinarily furnished by equipment suppliers; after reviewing CFM's pricing explanation, the contracting officer determined that CFM's estimated costs for performing these services at least in part may have reflected a misunderstanding of the scope of some of these requirements. Accordingly, the contracting officer requested permission from the head of the agency, the Maritime Administrator, to cancel the IFB--on the ground that "the contracting officer cannot determine the reasonableness of the bid price"--and complete the acquisition through negotiations as permitted by Federal Acquisition Regulation (FAR) § 14.104-1(a) and § 15.103.

The Maritime Administrator authorized the cancellation and conversion of the requirement to an RFP. The contracting officer issued amendment No. 0002, which implemented the solicitation's conversion to an RFP. An accompanying cover letter advised CFM that its initial proposal was due by September 24 and that upon receiving the firm's proposal, MARAD would commence negotiations by means of a telephone conference. After CFM submitted an unrevised copy of its original bid pricing schedule as its initial proposal, the

MARAD contract specialist and technical representative held a 4-hour telephone conference with CFM during which the RFP's service requirements were discussed. The results of the discussions were two-fold: (1) MARAD recognized that in some respects the solicitation had led CFM to include more services and related costs in its bid than the agency believed necessary; and (2) MARAD concluded that by separating the equipment purchase from the installation contract, it might not achieve the anticipated cost savings because of inevitable duplication of some services and costs related to risks of unsatisfactory performance.

On September 24, following the discussions with CFM, MARAD modified the services requirements in the RFP to clarify the scope of the incidental services it intended the equipment supplier to provide--specifically, to indicate that the services were less extensive than CFM believed them to be in calculating its bid price. Four days later, the contracting officer contacted CFM to advise that MARAD was considering canceling the solicitation due to "cost/benefit considerations"; in this regard, the contracting officer told CFM that it was conducting a cost/benefit analysis of "rolling this equipment buy into the upcoming installation contract." CFM was further advised that negotiations would be suspended until these concerns were resolved.

By letter dated October 27, MARAD notified CFM that the RFP was canceled; the cancellation notice provided in relevant part that:

"A determination has been made that because the acquisition requires performance of certain services in addition to providing the equipment listed in the schedule, the [g]overnment is no longer receiving the benefit of lower pricing possible when such equipment is purchased directly from a supplier.

"At this time, [MARAD] has determined that the needs of the [g]overnment can best be satisfied by including the equipment, testing, start-up and training requirements of the subject solicitation within the forthcoming heating system upgrade solicitation."

That afternoon, CFM filed an agency-level protest with the contracting officer, challenging the cancellation as improper; by letter dated November 13, the contracting

officer denied the protest. On November 17, CFM filed this protest with our Office.<sup>1</sup>

#### DISCUSSION

The protester argues that by converting the IFB to a negotiated procurement and telling CFM that negotiations would be conducted with the firm, MARAD committed itself to negotiate its requirements with CFM alone, and that the firm is, therefore, entitled to submit a revised proposal in response to the revised solicitation. Under FAR § 15.608(b)(4), a procuring agency may reject all proposals received in response to an RFP if cancellation is clearly in the government's interest. Thus, as a general rule, in a negotiated procurement the contracting agency need only demonstrate a reasonable basis to cancel a solicitation after receipt of proposals, as opposed to the "cogent and compelling" reason required to cancel an IFB where sealed bids have been opened. Xactex Corp., B-241739, May 5, 1992, 92-1 CPD ¶ 423. The standards differ because in procurements using sealed bids, competitive positions are exposed as a result of the public opening of bids, while in negotiated procurements there is no public opening. ACR Elecs., Inc., B-232130.2; B-232130.3, Dec. 9, 1988, 88-2 CPD ¶ 577. The question presented by this protest is whether the agency's second thoughts about its procurement strategy have a reasonable basis.

As discussed above, rather than cancel the solicitation altogether when it received an unreasonably high bid, MARAD initially planned to clarify its specifications and negotiate on a sole source basis with the protester. However, before obtaining a revised proposal from CFM pursuant to this strategy, the agency, responding to the recommendation of the architect-engineer firm assisting in the system upgrade and its own technical personnel, reconsidered its plan to buy the equipment separately, and canceled the solicitation. MARAD's conclusion was that consolidating the equipment and installation requirements in one contract

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<sup>1</sup>MARAD asked us to dismiss CFM's protest as untimely since it was not filed within 10 days of the contracting officer's September 28 communication that the agency was considering consolidating the equipment and upgrade requirements. By the contracting officer's own admission, however, CFM was only apprised that the agency was "considering" cancellation; accordingly, because the actual cancellation determination was not relayed to CFM until October 27--whereupon the firm promptly filed an agency-level protest--we consider its subsequent protest to this Office to be timely filed. See Brackett Aircraft Radio Co., B-244831, July 25, 1991, 91-2 CPD ¶ 92.

would be in the best interests of the government since "the general [installation] contractor would have supervisory and warranty personnel on location already and would not incur excessive costs in providing the [services] requirements." As the contracting officer stated:


"After evaluation of the cost/risk information brought to light in this procurement, it was determined that the most cost effective way to complete this project would be to make the installing contractor responsible for the equipment purchase. This would be in the [g]overnment's best interests because it would do away with the duplication of risks and other costs associated with on-site activities."

MARAD also asserts that it "determined that a more reasonable price might be obtained" by consolidating the canceled RFP with the upgrade solicitation "because bidders on the general contract would be highly competitive, whereas [CFM] knew [it] was the only offeror on the equipment purchase at the time of negotiations."

The potential for cost savings may constitute a reasonable basis to cancel a negotiated procurement. See G.K.S., Inc., 68 Comp. Gen. 589 (1989), 89-2 CPD ¶ 117; Business Coms. Sys., Inc., B-218619, July 29, 1985, 85-2 CPD ¶ 103, aff'd, B-218619.2, Sept. 17, 1985, 85-2 CPD ¶ 293. The protester has not provided and the record does not otherwise contain evidence that it will be less expensive for the agency to purchase the equipment separately. The record shows that at one time the agency thought so, and that later it reconsidered this opinion--before the protester prepared a revised proposal--after discussing the matter with the protester and reexamining in detail the services and costs that would be duplicated by its initial approach. The protester argues that MARAD must conduct sole source negotiations with it in order to prove that a combined procurement is the better approach. In these circumstances, including the fact that there is a substantial prospect for competition from the consolidated contract, we do not believe that the obligation alleged by CFM is placed on MARAD by the governing regulation. Cancellation of a negotiated procurement is unobjec-

tionable if there may be a less expensive approach for fulfilling the governments needs. See Printz Reining GmbH, B-241510, Feb. 8, 1991, 91-1 CPD ¶ 143; Business Coms. Sys., Inc., supra. Accordingly, for the foregoing reasons, we do not object to the agency's cancellation of the solicitation.

The protest is denied.



*for* James F. Hinchman  
General Counsel