



Comptroller General  
of the United States

1217126

Washington, D.C. 20548

# Decision

**Matter of:** CFM Equipment Company--Reconsideration

**File:** B-251344.2

**Date:** August 30, 1993

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

## DIGEST

Request for reconsideration is denied where protester does not show any errors of fact or law, or present information not previously considered, that would warrant reversal or modification of prior decision that agency properly canceled solicitation because of potential for increased competition and cost savings.

## DECISION

CFM Equipment Company requests reconsideration of our decision, CFM Equip. Co., B-251344, Mar. 31, 1993, 93-1 CPD ¶ 280, in which we denied CFM's protest against 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 (USMMA).

We deny the request for reconsideration.

## BACKGROUND

This requirement was originally issued as an invitation for bids (IFB) and was intended to be a lead-in equipment buy for an upcoming heating system installation/upgrade contract at USMMA. As issued, the IFB required bidders to complete and submit a 5-page pricing schedule containing various equipment contract line item numbers. The solicitation also required the successful contractor to supply several equipment-related services such as "Jobsite Supervision" of the equipment installation; contained certain "General Provisions" relating to the supplier's responsibility for operation of the equipment and related systems; and required both a labor and parts warranty.

At the September 8 bid opening, CFM was the sole bidder; its bid price exceeded the government estimate by approximately 30 percent. In a written confirmation of its bid, CFM explained to the contracting officer that its 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 sum, CFM explained that it had incorporated an additional \$140,132 into its bid price to cover the firm's cost of providing these services.

After obtaining CFM's written explanation of its bid price, the contracting officer determined that CFM's price appeared to reflect the firm's misunderstanding of the scope of services required under the IFB--a misunderstanding which could be clarified through negotiations. Accordingly, by amendment dated September 22, MARAD canceled the IFB and converted the requirement to a request for proposals (RFP), as permitted by Federal Acquisition Regulation (FAR) §§ 14.104-1(a) and 15.103.

By means of a cover letter accompanying the amendment, the contracting officer 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. As its initial proposal, CFM submitted an unrevised copy of its original bid pricing schedule.

Although MARAD next proceeded to engage in technical discussions with CFM regarding the scope of the required services, in the course of these discussions, the agency discovered that by separating the equipment purchase from the installation/upgrade contract, MARAD had inadvertently duplicated several services and costs. As a result, MARAD decided to consolidate the equipment and installation requirements into one contract since the "the general [installation] contractor would have supervisory and warranty personnel on location already and would not incur excessive costs in providing the [services] requirements." Additionally, the agency concluded that by consolidating these requirements into one procurement, "a more reasonable price might be obtained 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." Accordingly, by letter dated October 27, MARAD canceled the equipment RFP.

On November 17, CFM filed a protest with our Office challenging the cancellation of the RFP as improper. Because the consolidation of the equipment and installation requirement constituted a less expensive approach for fulfilling MARAD's needs, and because the potential for cost savings constitutes a reasonable basis for canceling a negotiated procurement, we denied CFM's protest.

#### RECONSIDERATION REQUEST

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-247139, 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.

In our prior decision denying CFM's initial protest, we applied a reasonable basis analysis to conclude that MARAD's cancellation of the equipment RFP was unobjectionable. In its request for reconsideration, CFM contends that the agency was required to demonstrate a compelling basis for cancellation of the equipment RFP. CFM argues that because its proposal prices were merely a reconfirmation of its original bid prices--which were publicly revealed at the predecessor IFB's bid opening--the more stringent "cogent and compelling" cancellation standard should have been invoked.

Where, as here, an IFB is canceled and converted into an RFP, the resulting solicitation constitutes a new procurement. Although CFM was advised that it could reconfirm its bid price as the basis for commencing negotiations under the RFP, this was by no means a directive from the agency to resubmit its prior bid pricing schedule; in fact, the converted solicitation incorporated FAR § 52.215-16, which states in relevant part:

"The [g]overnment may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint." FAR § 52.215-16(c).

In sum, we think the RFP unquestionably constituted a new procurement, and clearly invited CFM to submit its best price in the form of an initial offer under the converted solicitation. Accordingly, since the price CFM submitted under the RFP was not publicly disclosed in the course of the new procurement, the agency needed only a reasonable basis for canceling the converted solicitation.<sup>1</sup>

Under our Bid Protest Regulations, to obtain reconsideration the requesting party must show that our prior decision contains either errors of fact or of law or present information not previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.12(a) (1993). The remaining arguments advanced by CFM in its current request for reconsideration--that (1) the contracting officer reneged on a commitment to negotiate a sole-source award with CFM; and (2) CFM's original bid price was reasonably based--merely repeat arguments which were advanced by CFM during its original November 17 protest and rejected in our decision. Since these arguments have been previously addressed and merely serve here to express CFM's disagreement with our prior decision, they do not provide a basis for reconsideration of that decision. Varec N.V.--Recon., B-247363.7, Mar. 23, 1993, 93-1 CPD ¶ 259.<sup>2</sup>

---

<sup>1</sup>In any event, even assuming that the "cogent and compelling" standard were applicable, we think the RFP's cancellation would nonetheless be proper. FAR § 14.404-1(c)(10) specifically permits cancellation, consistent with the compelling reason standard, where cancellation is clearly in the public's interest. Here, where award under the canceled solicitation would require the government to pay twice for warranty and supervision services and where the record shows that a resolicited requirement will significantly expand the competition pool beyond what was otherwise a sole-source negotiation, cancellation is clearly in the public's interest. See Color Dynamics, Inc., B-236033.2, Oct. 27, 1989, 89-2 CPD ¶ 391, aff'd, B-236033.3, Dec. 22, 1989, 89-2 CPD ¶ 583 (compelling basis for cancellation exists where agency has specific evidence suggesting that resolicitation would yield lower prices).

<sup>2</sup>In its request for reconsideration, CFM alleges for the first time that the agency's replacement equipment-installation procurement constitutes a "'sweetheart' deal . . . to favor a certain supplier." CFM has neither identified the "certain supplier" nor otherwise explained how the replacement solicitation "favors" another competitor. Absent such specific information, CFM's allegation of improper agency action or bias amount to mere speculation which is insufficient to support a challenge to the agency's  
(continued...)

CFM also requests recovery of its bid/proposal preparation costs, and a "[l]oss of profit" amount.

The Competition in Contracting Act of 1984, 31 U.S.C. § 3554(c)(1) (1988), and our implementing regulations, 4 C.F.R. § 21.6(d), provide for the award of bid or proposal preparation costs where our Office determines that "a solicitation, proposed award, or award [of a contract] does not comply with a statute or regulation." Since the challenged cancellation was proper, and since the protester has not alleged any other basis from which to conclude that the agency has acted contrary to statute or regulation, there is simply no basis to allow CFM to recover its bid/proposal preparation expenses.

To the extent CFM requests reimbursement of its lost profits, we note that even where a protester has been wrongfully denied award of a contract, there is no legal basis for allowing the recovery of lost profits. Introl Corp., 64 Comp. Gen. 672 (1985), 85-2 CPD ¶ 35; Firebird Constr. Corp.--Recon., B-246182.2, May 27, 1992, 92-1 CPD ¶ 473; Ralph Turnbull--Claim for Costs and Lost Profits, B-238399, Feb. 12, 1990, 90-1 CPD ¶ 183.

The request for reconsideration is denied.



for James F. Hinchman  
General Counsel

---

<sup>2</sup> (...continued)

action. See Medical Serv. Corp. Int'l, B-252801, Apr. 19, 1993, 93-1 CPD ¶ 335; Imaging Equip. Servs., Inc., B-247201, Jan. 10, 1992, 92-1 CPD ¶ 50.