



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Werres Corporation

**File:** B-255379; B-255381

**Date:** February 25, 1994

Barry Roberts, Esq., Roberts & Hundertmark, for the protester.

Robyn R. Gilliom, Esq., and Gregory D. Rothwell, Department of the Treasury, for the agency.

Aldo A. Benejam, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

An agency has a compelling reason to cancel a solicitation where inconsistencies between the bidding schedule and specifications render the solicitation prejudicially ambiguous and where the solicitation significantly overstates the agency's minimum needs.

### DECISION

The Werres Corporation protests the decision to cancel invitation for bids (IFB) No. IRS-93-MW-14, issued by the Department of the Treasury for storage racks to be installed at the Internal Revenue Service's Central Area Distribution Center in Bloomington, Illinois.

We deny the protest.

The agency issued the IFB on July 14, 1993, as a total small business set-aside. Bidders were required to submit a unit and extended price for an estimated quantity of 1,500 "4-pallet-high" storage racks. Award was to be made to the lowest-priced, responsive, responsible bidder.

The agency received five bids by the August 27, bid opening date as follows:

<u>Bidder</u>	<u>Total Price</u>
Central Illinois Equip.	\$180,874
Clymer Enterprises, Inc.	\$212,400
Allied Handling Equip.	\$264,380
Werres Corporation	\$287,128
Industrial Storage Equip.	\$354,600

The contracting officer rejected as nonresponsive the bids submitted by Central, Clymer, and Allied, and awarded the contract to Werres on September 27.<sup>1</sup> Upon reviewing the solicitation and the bids submitted, however, the agency's Office of Procurement Policy (OPP) discovered an apparent inconsistency between the pricing schedule and the specifications. Specifically, OPP concluded that the IFB did not clearly state that the agency required both 3-pallet-high and 4-pallet-high racks, and that it appeared that bidders may have been confused by inconsistent information in the IFB. Accordingly, OPP instructed the contracting officer to cancel the IFB because of the ambiguities,<sup>2</sup> and on September 28, the contracting officer notified Werres of the cancellation. This protest to our Office followed.

Werres maintains that the IFB was not ambiguous because, despite the apparent inconsistencies in the IFB, Werres was able to ascertain the required quantity of racks by examining blueprints incorporated in the solicitation. Thus, Werres concludes that the cancellation was improper, and that it should be allowed to retain its contract.

Because of the potential adverse impact on the competitive bidding system of canceling an IFB after prices have been exposed, any cancellation after bid opening must be based on a compelling reason. Federal Acquisition Regulation (FAR) § 14.404-1(a)(1);<sup>3</sup> Pavel Enters., Inc., B-249332, Nov. 9, 1992, 92-2 CPD ¶ 330. A compelling reason to cancel a

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<sup>1</sup>The contracting officer rejected the bids of Central, Clymer, and Allied, for reasons unrelated to this protest.

<sup>2</sup>In addition, the agency has subsequently concluded that the IFB overstated the quantity of racks needed. This problem, identified after the agency canceled the IFB, is discussed below and provides further support for the cancellation decision. Deere & Co., B-241413.2, Mar. 1, 1991, 91-1 CPD ¶ 231.

<sup>3</sup>The protester relies on the reference in FAR § 14.404-1(c) to cancellation "before award" to argue that the cancellation of an IFB after award is not authorized. We see no basis to interpret the cited FAR provision as barring termination of a contract and cancellation of the underlying IFB based on a defective solicitation. See Control Corp., Control Data Sys., Inc.--Protest and Entitlement to Costs, B-251224.2 et al., May 3, 1993, 93-1 CPD ¶ 353. Also, the fact that the head of the procuring activity approved the cancellation after the contracting officer notified Werres of the cancellation is immaterial and has no bearing on the propriety of the cancellation.

solicitation exists where the specifications are ambiguous with respect to the amount of work that is required and the specifications are disparately interpreted by the bidders. United States Elevator Corp., B-225625, Apr. 13, 1987, 87-1 CPD ¶ 401. An ambiguity exists where two or more reasonable interpretations of a solicitation are possible when read as a whole. Id. Contracting officials have broad discretion to determine whether appropriate circumstances for cancellation exist, and our review is limited to considering the reasonableness of their decisions. Professional Carpet Serv., B-212442; B-212442.2, Oct. 24, 1983, 83-2 CPD ¶ 483. Here, we conclude that the agency had a compelling reason to cancel the IFB because the solicitation was ambiguous.

First, there was no clear statement in the IFB explaining the relationship between the estimated 1,500 units of 4-pallet-high racks in the bidding schedule and the various references to the different types and quantity of racks throughout the specifications. Section B of the IFB required bidders to submit unit and total prices as follows:

"The contractor shall furnish all labor, materials, equipment, tools and supervision necessary to fabricate and install four (4) pallet high drive-in racks.

	ESTIMATED QUANTITY	UNIT PRICE	TOTAL PRICE
1. 4-pallet-high drive-in racks	1,500 UNITS	\$___	= \$___"

A unit was defined as a "1 four pallet high drive-in rack." Thus, under section B, the IFB called for an estimated 1,500 4-pallet-high racks.

Other sections of the IFB, however, including the specifications and work statement, contained references to configurations of 3-pallet-high racks, as well as 4-pallet-high racks. For example, section C.1.1.2 of the IFB stated:

"B. Installation design. The three (3) tier configuration will consist of the lowest tier placed directly on the floor slab with the other two (2) tiers supported by the rack system. The four (4) tier configuration will consist of the lowest two (2) tiers stacked directly on the floor slab with the other two (2) tiers supported by the rack system."

A review of the blueprints incorporated in the IFB reveals that they also appear to depict configurations of both 3-pallet-high and 4-pallet-high racks. Given these inconsistencies, we conclude that the agency reasonably concluded that bidders could have interpreted the requirement differently.

In addition, our review of the five bids submitted shows that the bidders were, in fact, misled by the IFB. Three bidders, including Werres, annotated the bidding schedule and submitted separate prices for both types of racks, while the other two bidders simply completed section B of the IFB and submitted lump-sum prices only for the 4-pallet-high racks. Neither of these bidders referenced the 3-pallet-high racks anywhere in their bids. We also note that at the bidder's conference, at least one bidder expressed its confusion over the requirement, asking whether the agency intended for bidders to price 3-pallet-high, 4-pallet-high racks or both. Although the agency amended the IFB to respond to the bidder's question--stating that "[p]ricing should be provided for both"--it did not clarify the quantity of the different types of racks required, nor modify the pricing schedule to reflect a need for both types of racks.

In our view, the inconsistencies between the bidding schedule and the specifications rendered the IFB ambiguous, misled bidders and reasonably provided a compelling reason for canceling the solicitation.<sup>4</sup> As a result, the agency could not be certain that the bidders' prices reflected the actual requirement for both types of racks, or whether the bidders simply misinterpreted the requirement and would have submitted lower prices if the specifications were clarified. Compare Orange Shipbuilding Co., Inc.; Fredman Shipyard, Inc., B-222384.3; B-222384.4, Sept. 29, 1986, 86-2 CPD ¶ 365 (despite apparent inconsistency in solicitation, award did not prejudice other bidders since depending on bidders' interpretation of the IFB, their prices would either remain the same or increase).

After deciding to cancel the IFB, the contracting officer contacted all five bidders who had initially responded to the IFB to clarify the agency's actual requirement for 57 3-pallet-high and 262 4-pallet-high racks, for a total of 319 units of both types of racks (rather than the 1,500 units of only 4-pallet-high racks estimated in the IFB), and gave them 24 hours to submit revised prices. Based on those responses, the contracting officer awarded a new contract to Central on September 30. In response to this protest, the agency states that it intends to terminate the contract awarded to Central and resolicit. Thus, while we have

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<sup>4</sup>Likewise, the fact that Werres may have been able to reconcile the ambiguities in the specifications by examining the blueprints does not detract from our conclusion that the IFB was prejudicially ambiguous to other bidders. As already noted, at least two bidders did not indicate whether their prices included 3-pallet-high racks.

considered the protester's challenge to the cancellation decision, its challenge of the award to Central is academic.

The protest is denied.

*for* *Ronald Berger*  
Robert P. Murphy  
Acting General Counsel