

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-181642

60065
DATE: October 20, 1975

MATTER OF: Informatics, Incorporated

97811

DIGEST:

Cancellation of solicitation is justified where GAO investigation shows that work originally specified no longer adequately reflects agency's current need. Investigation conducted pursuant to decision denying protest against cancellation of solicitation has revealed no evidence that agency officials acted improperly or in bad faith.

By decision dated February 28, 1975 (Informatics, Incorporated, B-181642) we denied the protest of BNA Research, Inc., against the Department of Commerce's cancellation of solicitation No. 4-36995, which called for bids for the extraction of information from patent applications and the conversion of such data into the proper form for printing of Patent Office publications.

Notwithstanding our denial of the protest, the decision stated that our Office would initiate a detailed investigation of the circumstances surrounding the procurement to ascertain whether corrective measures are warranted.

Our investigation consisted of a review of pertinent agency documents and discussions with officials of the Patent Office, Department of Commerce and Government Printing Office (GPO). The review was directed, in part, towards the Department's cancellation of the solicitation, which was based upon a large number of changes in the specifications. We have reviewed the events leading to the cancellation as indicated in the following paragraphs.

Prior to 1970, all patents and the weekly Official Gazette, which contains summaries of all approved patents, were prepared for printing by GPO. In an effort to automate the printing of patents and the Official Gazette and to develop a patent data base having retrieval capabilities, the Department awarded a fixed-price-indefinite-quantity contract on April 29, 1970, to the International Computaprint Corporation (ICC) for services to prepare in machine language on computer magnetic tape, the patent data for a patent full text data base and to extract data for patent printing. The contract provided for these services for 1 year with 2 option years.

The original contract has been amended sixteen times. Generally, the amendments provided for changes in scope, clarification of contract requirements, and extending the contract beyond its original term which ended June 30, 1973. The contract was extended twice after this date while the Department prepared an IFB which was issued on January 21, 1974. This delay we were told, was attributable to the Patent Office's waiting for a ruling from its general counsel concerning the legality of making a dual award.

After the bids in response to the IFB were opened, the two low bidders (Informatics and Informatics Tisco) were rejected. In the contracting officer's opinion, the two bids were not responsive to the IFB. Informatics and Informatics Tisco subsequently protested this action and the protest was forwarded to GAO. In October 1974, before GAO reached a decision on the protest, the Department canceled the IFB giving as the reason a change in agency requirements.

Because ICC, the incumbent contractor, was able to satisfy many of the new agency requirements, the existing contract was amended to incorporate them. Also, the contract was extended through December 31, 1975, to provide time to draft a new IFB and award a new contract. The new IFB, issued on May 1, 1975, was based on a complete reevaluation of Patent Office requirements and included changes not contemplated in the original IFB.

In September 1974, about 8 months after the solicitation was issued, ICC advised the Patent Office that it had achieved some technological breakthroughs which enabled it to include more information, such as two column presentations and nearly all equations on magnetic tapes. According to ICC these capabilities did not exist at the time the solicitation was issued. Previously, this information had to be prepared separately and manually inserted at GPO before printing.

As a result of these technological breakthroughs, the need for GPO to process patent applications and separately prepare and manually insert patent data before printing will be reduced. The need for GPO to process patent applications will be eliminated entirely. More importantly, the data contained in equations and two column presentations will become part of the data base.

In May 1974, about 4 months after the solicitation was issued, the Commissioner of Patents directed the Patent Office to develop a plan for including patent claims rather than patent abstracts in the Official Gazette. A patent claim states in specific terms exactly what the inventor claims his invention does. In contrast, an abstract is either a physical description of the invention or a brief description of how the invention works. The inclusion of claims rather than abstracts first appeared in the October 1, 1974, Official Gazette and has increased the average size of the publication about 25 percent.

In May 1974, the Patent Office learned that a GPO modernization plan had been approved. The modernization plan, expected to be implemented about the end of 1975, will improve GPO's ability to electronically photocompose patent data after processing by the contractor. After the plan is implemented, GPO will be able to electronically photocompose more than twice the number of specialized letters (characters) and symbols, such as square root signs, that currently require separate and more costly composing. In addition, the electronic composition will be done at a faster rate.


Until the end of 1974, a contractor, other than ICC, was responsible for preparing the tapes for the weekly and annual List of Patentees--a small section of the Official Gazette. ICC developed the capability of preparing these tapes and proposed doing so at a lower cost. As of January 1975, ICC began preparing the tapes for the List of Patentees. Consequently, the preparation of all patent data tapes is now done by one contractor.

As a result of these events, and others less significant, it was deemed necessary to make 15 changes in the original specification. According to the Patent Office official responsible for the procurement action, no individual event justified cancellation of the solicitation, but the cumulative impact of all these events provides the necessary justification.

Three of the companies that submitted bids in response to the original IFB stated they believed the Department should not have canceled the IFB, but should have awarded a contract based on the specifications set forth in the IFB and then modified the contract to add the changed specifications. In our opinion, had the Patent Office done this, the total cost of the work may have been higher because changes in specifications would have been added to the contract in a non-competitive environment.

Based on our analysis of the above events, it appears the Patent Office and the Department acted in good faith in canceling the IFB. During our work we found no evidence to indicate that the IFB was canceled to exclude one or more bidders from competing for the contract.

In view of these findings we find that no corrective measures are warranted.


Deputy Comptroller General
of the United States