

**DECISION****THE COMPTROLLER GENERAL  
OF THE UNITED STATES**

WASHINGTON, D.C. 20548

FILE: B-186177

DATE: September 14, 1976

MATTER OF: TIMCO

**DIGEST:**

Contracting agency determination after bid opening that adequate funding is not available justifies canceling solicitation.

Invitation for bids No. FO4606-75-B-0428 was issued by the Sacramento Air Logistics Center, McClellan Air Force Base, for the procurement, for an 18-month period, of maintenance and repair services for radomes. The work was divided into two schedules: programmed and unprogrammed work. The programmed work schedule was specific as to radomes by location and type, work required, and fiscal year quarter during which the work was to be accomplished. The unprogrammed work schedule listed radome sizes and types and the work required, but did not specify any particular location or time for performance. Unprogrammed work was defined "as that work which may generate at random times in unpredicted quantities." The work in both schedules was expressed in terms of estimated quantities. Finally, emergency technical services and work over and above all work elsewhere set forth were provided for under programmed work.

After bid opening but prior to award, a severe funding shortage caused a reassessment of requirements resulting in the deferral for 1 year of work on 64 radomes and the elimination of work on 32 radomes, thus affecting 96 of the 101 radomes included in the programmed work. The amount of programmed work would be significantly reduced and, presumably, the unprogrammed work increased accordingly. Since prices for the latter category were higher, the IFB was canceled.

TIMCO, the low bidder, contends that the cancellation was improper and that it should receive award under the invitation. TIMCO points out that a requirements contract was to be awarded to cover all work needed on the radomes in excess of the Government's in-house capabilities. Thus the Government needs were expressed merely as estimates. TIMCO notes that the failure of the Government to order any of the estimated quantities was not grounds for any equitable increase in contract price since the clause dealing with variations in estimated quantities (paragraph 7-603.27 of the Armed Services Procurement Regulation (ASPR) (1975 ed.)) would be specifically excluded from the contract by language in the IFB.

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TIMCO as low bidder offered to reduce some of its unprogrammed work prices, to extend the length of the contract, and to perform the work at prices not to exceed those bid. TIMCO notes that a resolicitation for the reduced quantities will most probably result in higher bid prices.

While TIMCO raises other alleged procedural defects in the manner in which the instant procurement was handled, since such procedural matters do not affect the validity of the cancellation, Cf. Aviation Specialties Company, B-178255, February 25, 1974, 74-1 CPD 95, the sole issue for our consideration is whether the invitation was properly canceled.

TIMCO's contentions are grounded on the position that the IFB calls for a requirements contract. This is consistent with language in the IFB. However, we question whether the programmed portion of the work, expressed in terms of specific work on designated radomes within a stipulated period of time, can properly be so characterized. Requirements contracts are entered into when the specific quantities and times are not known in advance. Here the Government apparently knew exactly what it wanted. If this major portion of the work would not qualify as a requirements contract, we think the significant shift and reduction in the work would call for a new solicitation.

More importantly, the Government decided that it lacked funds to perform all of the work called for. While a requirements contract, as the IFB indicates, does not obligate the Government to order any specific amount, it does obligate the Government to satisfy all of its requirements within the contract definition under the contract; it does not simply give the right to order work at the Government's option. Government contracting officers are generally prohibited from entering into contracts, whether for requirements or stated quantities, calling for payments in excess of monies available. See 31 U.S.C. 665(a) (1970). In this case, based on the Air Force position, award of the contract advertised could well result in violation of the prohibition.

We have held an agency determination that funds are not available for contract obligation sufficient reason to reject the bids received. Ocean Data Systems, Inc., B-180248, August 16, 1974, 74-2 CPD 103; International Multi Services, B-183333, June 13, 1975, 75-1 CPD 359.

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Accordingly, the protest is denied.

*Ryker*  
Deputy Comptroller General  
of the United States