

DOCUMENT RESUME

03600 - [A2513646]

[Protest against Requirement to Qualify Equipment and Subsequent Cancellation of Solicitation]. E-187563. September 7, 1977. 6 pp. + 2 enclosures (2 pp.).

Decision re: A. B. Machine Works, Inc.; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law I.

Budget Function: National Defense: Department of Defense - Procurement & Contracts (058).

Organization Concerned: Defense Logistics Agency: Defense Construction Supply Center.

Authority: 4 C.F.R. 20. A.S.P.R. 2-404.1(b). A.S.P.R.

16-101.2(c). 54 Comp. Gen. 872. 54 Comp. Gen. 877. 54 Comp.

Gen. 215. 54 Comp. Gen. 219. 49 Comp. Gen. 683. B-187159

(1977). E-159865 (1966). B-182303 (1975).

A company protested the Navy's requirement that it qualify its equipment, since it allegedly had "been successfully manufacturing and supplying to the Department of Defense similar parts for the past 8 years." The cancellation of the solicitation was also protested. The protest against qualifying the product was untimely and was not considered. The request for proposals was properly canceled, and the company's claim for the cost of lost drawings was not considered since no evidence of their value was presented. The claim for proposal preparation costs was denied because there was no evidence of arbitrary or capricious action by the agency. (SW)



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

B-187563

SEP 7 1977

The Honorable Fred Richmond  
House of Representatives

Dear Mr. Richmond:

We refer to your interest in a bid protest filed in our Office by A. B. Machine Works, Inc., concerning request for proposals No. DAC700-76-R-0747, issued by the Defense Construction Supply Center, Columbus, Ohio.

Enclosed is a copy of our decision of today denying the protest.

Sincerely yours,

R.F.KELLER

Deputy, Comptroller General  
of the United States

Enclosure

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**DECISION**



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

FILE: B-187563

DATE: September 7, 1977

MATTER OF: A. B. Machine Works, Inc.

**DIGEST:**

1. Protest against RFP requirement that firm offering to supply item other than brand name specified in RFP must submit data showing that such item is equal to brand name will not be considered on its merits, since it was filed after closing date for receipt of initial proposals.
2. Cancellation of RFP after determination that item solicited was no longer required is proper exercise of contracting officer's discretion.
3. Although criteria for cancellation of advertised procurement prescribed in ASPR § 2-404.1 (1976 ed.) are applicable to negotiated procurement cancellations, justifications for canceling RFP's are not limited to those circumstances. However, RFP cancellation may not be arbitrary.
4. Since RFP was canceled before offer was accepted and award documents were executed, formal contract never arose. Moreover, factors necessary for estoppel have neither been alleged nor demonstrated.
5. Claim for proposal preparation costs is denied where there is no evidence of arbitrary or capricious action toward claimant by procuring activity in canceling RFP.
6. Claim for cost of drawings submitted by claimant to procuring activity, which were lost during evaluation, is not appropriate for consideration at this time since no evidence as to their value has been presented.

Request for proposals (RFP) No. DSA700-76-R-0747 was issued by the Defense Construction Supply Center of the Defense Logistics Agency to satisfy a Department of the Navy requirement for five pump rotor assemblies manufactured by Worthington Marine & Industrial Products, Inc. (Worthington). Clause C30 of the RFP provided in part:

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"PRODUCTS OFFERED

"(a) Products offered must either be identical or functionally, physically, mechanically, and electrically interchangeable with the products cited in each procurement identification description of this solicitation.

\* \* \* \* \*

"\* \* \* [offeror] will furnish a product which is equal in all material respects to the product referenced in the CLIN description. The following NOTE is applicable:

"NOTE: (a) \* \* \* offerors \* \* \* must furnish with their offers, drawings and other data which will clearly describe the characteristics and features of their product.\* In addition, offerors must furnish drawings or other data covering design, materials, performance, etc., of the product cited in the schedule sufficient to enable the Government to determine that the offeror's product is equal to the product named in the schedule."

The only offer received was submitted by A. B. Machine Works, Inc. (A. B.), which proposed to furnish its own part in accordance with clause C30. The contracting officer therefore requested A. B. to provide technical drawings for evaluation of its part. A. B. complied, and the drawings were forwarded to the Navy Ships Parts Control Center (SPCC) for coordination and evaluation. (These drawings were subsequently lost by the agency.) Six months later the requirement was verified as current by the contracting officer, and 2 months thereafter formal technical approval of A. B.'s proposal was issued. However, prior to award SPCC canceled the requirement because a funding change reduced the demand for the assemblies and sufficient stock was located to satisfy the remaining requirements.

A. B. protests the Navy's requirement that A. B. qualify its pump rotor assembly, since A. B. has allegedly "been successfully manufacturing and supplying to the Department of Defense similar parts for the past eight years." A. B. also protests the cancellation of the solicitation shortly after the requirement was affirmed as current and A. B. had qualified its part, contending that Worthington pressured the Navy into the cancellation. In addition, A. B. argues:

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"It is our position that the GAO should order the award of this contract or in the alternative that a contract actually existed, and find that the Government breached this contract, further that the Government violated its policy of dealing fairly with small business in the manner in which this entire procurement was handled, that bid and preparation costs be granted, that the Department of the Navy be ordered to pay for the drawings lost and to order the Navy and DLA to continue to insure that A. B. Machine Works, Inc. is fairly treated in connection with future procurements."

Concerning whether A. B. should have been required to qualify, section 20.2(b)(1) of our Bid Protest Procedures, 4 C.F.R. part 20 (1977) (Procedures), provides in part:

"Protests based upon alleged improprieties in any type of solicitation which are apparent prior to \* \* \* the closing date for receipt of initial proposals shall be filed prior to \* \* \* the closing date for receipt of initial proposals. \* \* \*"

In view of RFP clause C30, A. B. was aware upon viewing the RFP that it would be required to show the equivalency of its pump rotor assembly to the Worthington item in order to be eligible for award. Accordingly, its protest on this issue, filed after initial proposals were due, is untimely and will not be considered on its merits.

In regard to the cancellation of the RFP, our Office has recognized that the criteria for cancellation of a formally advertised procurement prescribed in Armed Services Procurement Regulation (ASPR) § 2-404.1 (1976 ed.) are applicable to cancellations of RFP's. Federal Leasing, Inc., 54 Comp. Ger. 872, 877 (1975), 75-1 C&D 236. ASPR § 2-404.1(b) (1976 ed.) provides in pertinent part:

"\* \* \* invitations for bids may be canceled after opening but prior to award when \* \* \*

"(iii) the supplies or services being procured are no longer required \* \* \*."

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In addition, a contracting officer has broad powers of discretion in deciding whether a solicitation should be canceled, and our Office will not interfere with such determination unless it is shown to be unreasonable. Semiconductor Equipment Corporation, B-187159, February 18, 1977, CPD 120. Moreover, in a number of decisions our Office has observed that contracting officers not only have the right to cancel a solicitation for supplies which are no longer needed, but have the duty to do so. Keco Industries, Inc., 54 Comp. Gen. 215, 219 (1974), 74-2 CPD 175; B-159865, October 6, 1966; Cf. 49 Comp. Gen. 693 (1970).

The Navy justifies the cancellation as follows:

"\* \* \* At the time it was determined that a quantity of five rotor pump assemblies was required, there were four backorders for units and none in stock. It was determined to buy five units in order to fill the four backorders and to have one unit in stock. \* \* \*

\* \* \* \* \*

"\* \* \* [Subsequently], two rotor pump assemblies in good working condition were turned in, probably taken from ships that went into mothballs. These were turned in at Norfolk and were subsequently issued to fill two of the backorders. Also, at about this time, the other two backorders were cancelled. It is felt that these cancellations ensued as a result of a change in the accounting classification applicable to this material to an account wherein the ship would bear the cost of stocking the item from their operations and maintenance funds. (In the former accounting class assigned, the ships were not directly charged.) About the same time the Long Beach Naval Shipyard cancelled a requisition which had been locally purchased and the material was then diverted to stock. With the filling of the two backorders, the cancellation of the other two backorders by the ships which had submitted the requisitions, and the diversion of one unit to stock, the procurement \* \* \* was no longer required and it was cancelled."

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A. B. has proffered no evidence, other than speculation, that there was any undue influence on the contracting officer to cancel the RFP. Therefore, and in view of ASPR § 2-404.1(b)(111) (1976 ed.) and the Navy justification for its actions as set out above, we cannot conclude that the cancellation was improper.

In regard to the above, we note the following statement in the contracting officer's report on the protest, after his discussion of ASPR § 2-404.1(b)(111) (1976 ed.):

"No comparable requirement exists for negotiated procurements on account of the fact that proposals have not been exposed publicly. Accordingly, even assuming the cancellation of the requirement was without justification, the Government was not estopped from cancelling the solicitation prior to award. \* \* \*"  
(Emphasis added.)

The contracting officer is correct only to the extent that the justifications for canceling an RFP are not necessarily limited to the circumstances described in ASPR § 2-404.1(b) (1976 ed.). However, we do not agree that an RFP may be arbitrarily canceled.

A. B.'s remaining contentions concern whether a contract with the Government in fact existed; claims for proposal preparation costs, and the cost of the lost drawings; and questions regarding A. B.'s participation in future procurements of this type.

First, since A. B.'s offer was never accepted by the Government and no award document was executed, it is clear that no formal contract ever came into existence. See ASPR § 16-101.2(c) (1976 ed.). Moreover, factors that would estop the Government from denying the existence of a contract have neither been alleged nor demonstrated. See Leonard Joseph Company, B-182303, April 18, 1975, 75-1 CPD 235.

Second, concerning A. B.'s claim for proposal preparation costs, it is regrettable that it took so long for A. B. to qualify under the RFP that by the time A. B. was successful the pump rotor assemblies were no longer required. However, we find no evidence of arbitrary or capricious action toward A. B. by the procuring activity since we have concluded the RFP was properly cancelled. The claim is, therefore, denied. See Keco Industries, Inc., supra. In addition, A. B.'s claim for the cost of the lost drawings is not appropriate for consideration at this time since no evidence as to their value has been presented.

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Finally, in regard to future procurements, A. B. had previously been advised by the Navy where to obtain information on the procedures to be followed to establish eligibility for award under similar solicitations for similar parts. Concerning which pump replacement parts the Navy at this time considers might require qualification, the agency states:

"\* \* \* The requirement to qualify for future specific procurements will depend upon the particular commodity and item involved and can only be determined after consideration of numerous factors to include nature of the item, criticality of application, quality control requirements, history of defective material, availability of engineering data to serve as a basis for evaluation, propriety considerations, etc. \* \* \*"

We find no basis to conclude that, under these criteria, A. B. will not be fairly treated in connection with future procurements of this type. In this connection, we note that although A. B. has, allegedly, encountered difficulty obtaining copies of solicitations in other procurements for pump replacement parts, it has in fact been aware of those procurements, been advised where RFP copies were available, and apparently submitted offers under each solicitation in which it had an interest.

The protest is denied.

*R. F. Kellin*  
Deputy Comptroller General  
of the United States





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

B-187563

SEP 7 1977

The Honorable Jacob K. Javits  
United States Senate

Dear Senator Javits:

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Enclosed is a copy of our decision of today denying the protest.

Sincerely yours,

H. D. KELLER

Deputy Comptroller General  
of the United States

Enclosure

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