

**DECISION**



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

PL2/41  
32102

**FILE:** B-216734 **DATE:** August 28, 1985

**MATTER OF:** North-East Imaging, Inc.

**DIGEST:**

Where a solicitation is defective because it provides no common basis for the evaluation of bids, the proper remedy is a resolicitation of the requirement with appropriate corrections.

North-East Imaging, Inc. protests the Veterans Administration's (VA) rejection of its bid as nonresponsive under solicitation No. 630-22-85 for servicing X-ray equipment. North-East also protests the agency's subsequent decision to terminate the contract and resolicit, contending that it was entitled to receive the award on the basis of its original bid.

We deny the protest.

The invitation for bids (IFB) required bidders to submit rates for various types of service and included a clause covering the provision of parts. The clause provided as follows:

"Parts furnished on a no-charge basis by the contractor, or parts purchased by the Veterans Administration will be installed at no added cost. Parts, not in excess of \$ \_\_\_\_\_ (\$250 unless otherwise indicated by the bidder) will be furnished by the contractor at no added cost. (Bidder to insert dollar amount in space provided therefor.)"

Three firms submitted the following bids:

<u>Bidder</u>	<u>Parts Supplied</u>	<u>Annual Charge for Service</u>
Picker X-Ray	Under \$ 250	\$143,001
Tech-Rad	Under 250	120,000
North-East Imaging		
Bid Option A	Under 1	90,000
Bid Option B	Under 500	132,000
Bid Option C	Under 1,000	180,000
Bid Option D	ALL	240,000

The contracting officer rejected North-East's bid as nonresponsive because North-East did not bid to provide parts valued at \$250 or less.

When North-East protested that each of its bids was responsive, the VA reexamined the IFB and found that the clause covering the supply of replacement parts was defective. The VA intended that the clause require bidders to provide all parts valued at \$250 or less without any additional charge, rather than allowing bidders the option of bidding on a different amount. While North-East's bid was in fact responsive to the actual terms of the IFB, the agency determined that award to North-East would not be proper because the IFB allowed the submission of bids based on completely different pricing premises and provided no method for evaluating them on any common basis. The VA therefore decided to terminate the contract that had been awarded to the low bidder (Tech-Rad) and to resolicit after revising the defective clause.

North-East argues that although it did not bid on the same basis as the other bidders, its own bid nonetheless presented the most favorable total cost to the government and, therefore, should be evaluated as the low bid. North-East notes that its "Bid Option A," offering to supply all parts valued at \$1 or less at a yearly maintenance fee of \$90,000, presents a lower total figure than Tech-Rad's bid to supply all parts valued at \$250 or less at an annual charge of \$120,000. Alternatively, the protester argues that its "Bid Option B," offering to supply all parts up to \$500 for an annual rate of \$132,000, would provide more parts than Tech-Rad's bid, for a proportionately smaller increase in cost.

In effect, the protester asks that the VA adopt some method for evaluating North-East's bid that would allow a basis for comparison with the other bids. Apparently, North-East believes the VA could evaluate the bids based on estimated parts usage for parts at the various value levels bid. It is not clear from the record, however, whether the

VA actually has the necessary information to use such an approach. In any event, it would be improper for the VA to do so since it is a fundamental principle of procurement law that all evaluation factors must be made known in advance of bid opening so that all bidders can compete on an equal basis. See Apex International Management Services, Inc., B-212220.2, May 30, 1984, 84-1 CPD ¶ 584.

Under the circumstances here, where the IFB provided no common basis for evaluating the bids, the VA simply could not determine which bid was in fact low. The solicitation, therefore, was clearly materially defective since award in a formally advertised procurement must be based on the most favorable cost to the government, but the IFB provided no assurance that this would in fact occur. See Go Leasing, Inc. et al., B-209202 et al., Apr. 14, 1983, 83-1 CPD ¶ 405.

We find, therefore, that cancellation of the solicitation was entirely proper. The agency has informed us, however, that despite advising our Office several months ago that the contract awarded to Tech-Rad would be terminated and the requirement resolicited, no action has in fact been taken to terminate the contract. We are concerned that the agency did not do as it advised and that we were not informed of any change in the agency's intent to terminate and resolicit. By separate letter, we are advising the Administrator of Veterans Affairs of these concerns.

The protest is denied.

*Harry R. Van Cleve*

Harry R. Van Cleve  
General Counsel