

WESTINGHOUSE  
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**DECISION**



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

**FILE:** B-220567

**DATE:** December 24, 1985

**MATTER OF:** Manufacturing Sciences Corporation

**DIGEST:**

1. Where agency's requirement for solicited items is substantially reduced from that on which bids were submitted, reinstatement of solicitation canceled after bid opening because of price unreasonableness is not appropriate.
2. Claim for bid preparation costs and costs of pursuing protest are denied where there is no showing that the government acted arbitrarily or capriciously with respect to the claimant's bid.

Manufacturing Sciences Corporation (MSC) protests the cancellation of Department of Energy (DOE) solicitation No. DE-FB02-85ER40208 for the fabrication of depleted uranium sheets to be used in the construction of calorimeters for high energy physics experiments. MSC argues that DOE acted improperly by canceling the solicitation after bid opening without first making a determination as to reasonableness of its price.

We deny the protest.

The solicitation was for uranium sheets to be used in experiments at three laboratories: Harvard/CERN, Stanford Linear Accelerator Center, and Fermi National Accelerator Laboratory. The solicitation called for four orders, each consisting of many different quantities of sheets. Order A was for sheets associated with the Harvard/CERN experiment; Order B for sheets required for the Stanford experiment; Order B.B was an alternate order for Stanford based on different specification requirements; and Order C was for sheets associated with the Fermi experiment.

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Bids were solicited for a basic quantity and two option quantities. The basic requirement consisted of all of Order A and designated line items of Order B/Order B.B and Order C. The remainder of Orders B/B.B and C were divided between option 1, to be exercised no later than March 1986, and option 2, to be exercised no later than June 1987.

The solicitation provided that the government would evaluate offers by adding the total price for both options to the total price for the basic requirement and required submission of bids for all the orders and quantities, including both Orders B and B.B, although the agency intended to award only one of the two. Award was to be made on an all or none basis.

DOE received two bids, one from MSC and one from CERCA. CERCA's bid was rejected as nonresponsive because it deviated from the solicitation's delivery schedule, did not contain prices for all the quantities solicited and did not provide for the required 120 day bid acceptance period. MSC's bid at \$8,083,706.44 (with Order B) and \$8,292,871.05 (with Order B.B), while responsive, was not considered reasonable because it exceeded the government estimate and because MSC's prices for the quantities that both MSC and CERCA bid on exceeded CERCA's prices by substantial amounts. On September 9, 1985, DOE informed MSC that the solicitation had been canceled pursuant to the Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.404-1(c)(6) (1984), because only one acceptable bid was received and the contracting officer could not determine the reasonableness of the bid price.

DOE indicated that it had not at that time decided whether to open negotiations with MSC pursuant to FAR 14.404-1(e)(1) or to resolicit. On September 17, DOE notified MSC that it intended to resolicit the requirement, and on September 23, MSC filed this protest.

Subsequently, by letter of October 1, DOE was notified that the Stanford experiment would not use uranium sheets; DOE argues that this results in a significant reduction in the supplies required by the IFB and provides an additional justification for the cancellation.

Because of the potential adverse impact on the competitive bidding system of canceling an IFB after bid prices have been exposed, the contracting officer must have a compelling reason to cancel. 48 C.F.R. § 14.404-1 (a)(1). A change in the agency's requirements after the opening of bids so that the solicitation no longer properly reflects the agency's minimum needs constitutes such a compelling reason. Tecom, Inc., B-213815.2, Aug. 6, 1984, 84-2 CPD ¶ 152.

At the time the solicitation was issued, DOE's requirement for uranium sheets reflected the needs of three different laboratories. DOE now is informed by Stanford that it will use lead, rather than uranium, as the material in its calorimeter, thereby eliminating a need for uranium sheets in its experiment. Since the Stanford experiment accounted for about 40 percent of the total requirement, we think the elimination of the Stanford requirement results in a substantial reduction in the total DOE requirement encompassed by the IFB.

MSC points out that the withdrawal of Stanford from the procurement results primarily in a reduction in the option quantity, while having little effect on the base requirement. While it is true that most of the Stanford requirement (Order B/B.B) was part of the option quantity, the solicitation provided that the low bidder would be determined by adding the option quantity prices to the prices bid on the base quantities, so that elimination of the quantity involved would have a major impact on the bid evaluation.<sup>1/</sup> Furthermore, since the solicitation required that bids be submitted on all orders and quantities specified, bidders who could not compete for an award containing the Order B/B.B quantities may compete for the reduced requirement. Under the circumstances, we believe that the elimination of the Stanford requirement provides a valid basis for not reinstating the solicitation. In light of this conclusion, we need not consider the protester's arguments concerning the propriety of the agency's initial basis for cancellation.

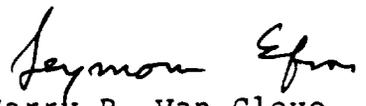
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<sup>1/</sup> The record shows that one-third of MSC's total evaluated bid prices for all orders represented prices for Orders B or B.B.

MSC does also argue that cancellation was not appropriate in any event because the quantity changes could have been negotiated with it after award. Generally, however, the integrity of the competitive bidding system precludes an agency from awarding a contract competed under a given set of requirements with the intention of materially changing those requirements after award. Kings Point Mfg. Co. Inc., B-210757, Sept. 19, 1983, 83-2 CPD ¶ 342. It is clear from the record here that the elimination of Order B/B.B from the requirement would have a material impact on the bid prices and possibly on the ability of a firm to bid. Thus, award to MSC in view of this change would have been improper.

Finally, MSC argues that in the event that we determine not to reinstate the canceled solicitation, it is entitled to bid preparation costs and its cost of pursuing this protest. We disagree. A prerequisite to entitlement to bid preparation costs as a result of cancellation of a solicitation is a showing that the government acted arbitrarily or capriciously with respect to the claimant's bid. M&M Services, Inc., B-218029, Mar. 27, 1985, 85-1 CPD ¶ 360. Here, we have concluded that cancellation constituted a reasonable exercise of discretion by the agency. The recovery of bid preparation cost is accordingly inappropriate. Similarly, since we have determined that the cancellation was proper the protester does not qualify for the reimbursement of its cost of pursuing the protest. Bid Protest Regulations, 4 C.F.R. §§ 21.6(d) and (e) (1985).

The protest is denied.

*for*   
 Harry R. Van Cleve  
 General Counsel