

DECISION



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

FILE: B-221380

DATE: March 18, 1986

MATTER OF: Arcwel Corporation

DIGEST:

1. Cancellation of a solicitation for ship repair services after bid opening due to omission of information concerning the availability of the ship, that is, the dates the ship was scheduled to be at sea, was proper where the correction of the omission was reasonably deemed to be a significant change requiring revision of the specifications.
2. An impermissible auction situation is not created where a sealed bidding solicitation is canceled because the specifications needed to be revised and the agency then uses a negotiated solicitation upon resolicitation.

Arcwel Corporation protests the award of a contract for ship repair services to RMI, Inc. under request for proposals (RFP) No. N62791-86-R-0057, issued by the Department of the Navy. Arcwel essentially contends that award should have been made to it under the initial invitation for bids (IFB No. N62791-86-B-0052), which was canceled after bid opening, and that the negotiated resolicitation under which the award was made to RMI created a price auction which permitted RMI to "underbid" Arcwel's otherwise low offer.

We deny the protest.

The initial IFB, issued on December 23, 1985, solicited bids for the repair of a 10-ton starboard cargo boom on the USS Tuscaloosa that had been damaged during ship operation. The IFB established the performance period as December 27 through February 2, with no indication that the ship would not be available at any time during this period. Further, the IFB specifications permitted the repair to be performed on board the ship without removal of the boom to the

contractor's facility for repair. Three bids were received and opened, as follows:

RMI	\$16,013.23
Arcwel	\$47,477.00
A&E Industries	\$55,555.00

Shortly after bid opening, the contracting officer was advised by the Navy's project manager that the IFB failed to inform bidders that the ship was scheduled to be at sea from January 6 through January 24 (apparently the ship's availability dates had been omitted from the IFB through inadvertence). The contracting officer decided to cancel the solicitation because the ship's actual schedule mandated that the contractor remove the boom from the ship before January 5, repair the boom at its own facility during the ship's at-sea period, and then reinstall the boom after the ship's return from sea duty. The contracting officer also noted that removal of the boom would require the use of a floating crane, which would not be required for repairs performed on board the ship.

Because the requirement was urgent, the contracting officer canceled the IFB and issued the RFP on the same day, December 27.^{1/} The RFP contained the following new specification:

[The cargo boom] shall be removed from the ship no later than 5 Jan 1986. Repairs will be accomplished in Contractor's Facility. Reinstallation will be accomplished during the import [sic] period from 25 Jan 1986 to 2 Feb 1986."

Three proposals, including one from the protester, were received. Discussions were conducted with all offerors and best and final offers were received that same day. The following prices were received:

RMI	\$44,693.00
Arcwel	\$47,477.00
A&E Industries	\$72,755.00

Award was made to RMI.

^{1/} The agency states that for the ship to perform its mission at sea, the cargo boom either had to be removed or fully repaired before sailing.

Arcwel argues that the Navy did not have a compelling reason to cancel the IFB because the specification changes had no effect on the scope of work required or its costs. In support of its position, Arcwel emphasizes that its initial bid price remained unchanged after the resolicitation. In this connection, Arcwel states that it had always contemplated removing the boom from the ship and performing the repair work at its facility, an approach that Arcwel characterizes as "the more reasonable method of proceeding." In short, Arcwel argues that the cancellation was unjustified because no significant changes which affect price are reflected in the RFP's specifications.

The use of specifications that do not adequately describe the government's actual needs generally provides a compelling reason for cancellation; however, the fact that an invitation is in some way deficient does not, of itself, constitute a compelling reason to cancel if other bidders would not be prejudiced by an award under the solicitation and award would serve the government's actual needs. Hoyer Constr. Co., B-216825, Feb. 13, 1985, 85-1 CPD ¶ 194. Stated differently, two factors must be examined to determine whether a compelling reason for cancellation exists: (1) whether the best interest of the government would be served by making an award under the solicitation, and (2) whether bidders would be treated unfairly and disparately if such an award were made. Switlik Parachute Co., B-188404, July 20, 1977, 77-2 CPD ¶ 38.

We cannot agree with Arcwel's assertion that the ship availability dates were not critical to the procurement. The contracting officer, determining that correction of the ship availability dates constituted a significant change to the specifications, note that the ship's schedule would require removal and reinstallation of the ship's boom and by use of equipment not previously required (a floating crane). Obviously what was being required here did change. Simply because Arcwel had originally contemplated removing and reinstalling the boom does not mean that the other bidders based their bids on the same approach, and the fact that the other bidders increased their prices in response to the revised solicitation suggests that they did not. Further, even if RMI's initial bid price was mistakenly low, as Arcwel alleges, the fact that the third bidder also significantly increased its price in response to the amended specifications. We therefore think that the cancellation and the resolicitation with the revised specifications were proper.

Arcwel also argues that the cancellation and resolicitation created an impermissible auction. As we stated in Stewart-Thomas Industries, Inc., B-196295, Mar. 5, 1980, 80-1 CPD ¶ 175, concerning a similar matter, this argument leads to the illogical conclusion that what is permitted in the regulations (which allow cancellation after bid opening when specifications are revised, see Federal Acquisition Regulation, 48 C.F.R. § 14.404-1(c)(2) (1984)), constitutes what is impermissible. Moreover, an impermissible auction is not created by cancellation and resolicitation after bid opening where, as here, the cancellation is in accordance with the governing legal requirements. See N.V. Philips Gloellampenfabriken, B-207485.3, May 3, 1983, 83-1 CPD ¶ 467.

The protest is denied.

for *Seymour Efron*
Harry R. Van Cleve
General Counsel