

**DECISION**



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

**FILE:** B-221391.2; B-221391.3; **DATE:** May 20, 1986  
B-222567

**MATTER OF:** Motorola, Inc.; General Electric  
Company

**DIGEST:**

1. Where an offered "equal" item in a brand name or equal procurement does not meet a precise performance feature listed as a salient characteristic, the bid must be rejected as nonresponsive even though the item meets the actual needs of the government.
2. An agency reasonably may determine that a compelling reason exists for canceling a brand name or equal invitation for bids (IFB) where the IFB listed as a salient characteristic a performance feature that exceeded the actual needs of the government and one of the two bids received was non-responsive for failure to satisfy the stated requirement.

Motorola, Inc., and the General Electric Company (GE) protest the cancellation of invitation for bids (IFB) No. F03601-85-B-A018, issued by Blytheville Air Force Base, Arkansas. The agency had issued the solicitation to obtain 94 portable two-way radios and 7 desktop battery chargers, but canceled the IFB after bid opening when it determined that the IFB's specifications were defective. Both Motorola and GE seek reinstatement of the IFB and the award of a contract. Motorola also protests the resolicitation of the requirement under IFB No. F03601-86-B0006. We deny the protests.

Background

The brand name or equal solicitation listed Motorola's MX300-R radio and NLN8988 battery charger and also invited bids on "equal" items. The solicitation stated that the "applicable specifications for this procurement are

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contained in Exhibit 1" consisting of a list of 14 specific features and 13 additional pages of other requirements, which also incorporated by reference a number of military and trade association standards.

The agency received two bids in response to the solicitation. GE was the low bidder. Immediately following the opening of bids, Motorola protested to the contracting officer that GE's bid was nonresponsive because the radio it offered allegedly does not meet several of the requirements specified in the IFB. Prior to resolution of the protest, Motorola filed a protest with this Office claiming that GE's bid was nonresponsive because the frequency range of GE's radio (138 to 174 MHz) is less than the range required by the solicitation (136 to 174 MHz). In its report to this Office, the Air Force stated that it had reviewed both bids and other available data and had determined that although the products offered by both bidders satisfied the agency's needs, neither bid complied in every respect with the requirements contained in the solicitation. Specifically, the agency stated that GE's radio did not satisfy the required frequency range and that Motorola's radio did not meet either the weight or the carrier output requirements. The agency determined further that the specifications were "inadequate and ambiguous" and canceled the solicitation. We therefore dismissed Motorola's protest as academic.

In this subsequent protest, Motorola argues that the contracting officer did not have a compelling reason for canceling the solicitation as required by the Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.404-1(a) (1984). Motorola contends that while GE's bid was nonresponsive, Motorola's bid was fully responsive despite the agency's finding to the contrary. Motorola does not agree that the solicitation was defective, but argues in any event that the mere fact that a solicitation might be deficient in some respect does not justify cancellation where, as here, award of a contract under the solicitation would satisfy the actual needs of the government. Motorola protests the resolicitation on the grounds that the only real change in the specifications is a reduction in the required frequency range so as to create an auction between Motorola and GE.

GE also has protested the cancellation. It argues that since both bidders offered products meeting the government's actual needs and since a resolicitation would result merely in receipt of bids from the same two bidders on the same products, canceling the solicitation will only delay the procurement of needed equipment. GE seeks reinstatement of the canceled IFB and award of a contract as the low bidder.

In response to the protests, the Air Force contends that the decision to cancel the solicitation was justified under FAR § 14.404-1(c)(1), which provides that an IFB may be canceled after bid opening, but before award when the agency determines that the solicitation contained inadequate or ambiguous specifications. The agency also says that two specific requirements were overstated. First, as indicated above, the solicitation required radios with an open bandwidth of 136 to 174 MHz. The agency now says that this bandwidth covers the entire frequency range that the Federal Communications Commission has assigned to the Air Force, yet only four frequencies in the middle of that range are needed for the current requirement. Second, the IFB specified an 8-hour battery life even though very few shifts would be that long, and even then an exhausted battery could be replaced with a spare within seconds. Further, for purposes of estimating the power drain on the batteries, the solicitation had stated that the radios would be used 10 percent for transmitting and receiving and 90 percent for standby even though, says the Air Force, it is more likely that use of the radios will be 90 percent for transmitting and receiving and only 10 percent for standby. Finally, the agency said that it considered the IFB to be unnecessarily restrictive of competition because it was "written around" Motorola's radio.

### Analysis

In a brand name or equal procurement, when a specified salient characteristic is a precise performance feature such as operating ranges, speed, or sensitivity, an offered "equal" product must meet that precise requirement. Cohu, Inc., B-199551, Mar. 18, 1981, 81-1 CPD ¶ 207. Here, GE's descriptive literature for its radios indicated a frequency range of between 138 MHz to 174 MHz, clearly less range

than the 136 to 174 MHz specified in the IFB. Thus, the agency was required to reject GE's bid as nonresponsive. Jarrett S. Blankenship Co., B-213294 et al., Apr. 2, 1984, 84-1 CPD ¶ 370. In arguing for an award despite the failure to offer radios with the specified frequency range, in effect GE is seeking a waiver of a salient characteristic. This is not within the discretion of the contracting officer, Scanray Corp., B-215275, Sept. 17, 1984, 84-2 CPD ¶ 299, since a waiver would be unfair not only to Motorola, but to other vendors who may not have bid because their equipment also does not meet the frequency range requirement as stated. In this connection, we note that the record shows that the agency had five vendors on its bidder's list yet received only two bids.

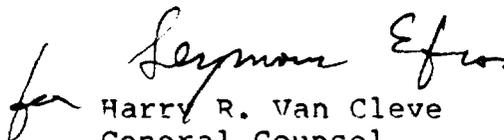
Rather than reject GE's bid and award a contract to Motorola, the second lowest bidder, the agency determined that the solicitation was defective for the reasons set forth above. The agency also suggested, though it does not appear that it ever expressly determined, that Motorola's bid also may have been nonresponsive. We need not consider the responsiveness of Motorola's bid, however, since we conclude that the reasons cited by the agency support the cancellation of the IFB.

The regulations provide that the preservation of the integrity of the competitive bidding system requires that after bid opening award must be made to the responsible bidder with the lowest responsive bid, unless there is a compelling reason to reject all bids and cancel the solicitation. FAR § 14.404-1(a)(1). Contracting officials have broad discretion to decide whether or not compelling circumstances justifying cancellation exist and our review is limited to considering the reasonableness of the exercise of that discretion. Midwest Holding Corp.--Reconsideration, B-219926.2, Nov. 13, 1985, 85-2 CPD ¶ 547. Inadequate or ambiguous specifications is one basis on which a contracting officer may determine to cancel an IFB after bid opening, FAR § 14.404-1(c)(1), but that alone does not justify cancellation when award to the low, responsive bidder nevertheless would satisfy the needs of the agency, and no other bidder would be prejudiced. Richard Hoffman Corp., B-212775.2, Dec. 7, 1983, 83-2 CPD ¶ 656. Cancellation of an IFB is also justified when it

appears that the government has overstated its needs and that its needs can be satisfied by less expensive articles differing from that for which bids were invited. FAR § 14.404-1(c)(5); R.J. Mack Co., B-219359 et al., Aug. 15, 1985, 85-2 CPD ¶ 175. Indeed, we have said that overstatement of the government's needs is a material solicitation deficiency requiring cancellation of an IFB and a resolicitation. West Alabama Remodeling, Inc., B-220574, Dec. 26, 1985, 85-2 CPD ¶ 718.

We believe the agency's specification of a frequency range in excess of its actual needs constituted a compelling reason to cancel the solicitation, particularly since the overstated requirement resulted in one of the two bids received being nonresponsive and may have caused other potential bidders not to compete. In these circumstances, award under the IFB notwithstanding the overstated requirements would not be proper since other bidders and potential bidders clearly would be prejudiced. In light of our conclusion that the agency had a proper basis for cancellation, we need not consider whether the other reasons advanced by the agency actually support its determination to cancel.<sup>1/</sup> Military Base Management, Inc., B-216309, Dec. 4, 1984, 84-2 CPD ¶ 619. Also for the same reason, Motorola's protest of the resolicitation is without merit.

The protests are denied.

  
for Harry R. Van Cleve  
General Counsel

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<sup>1/</sup> We note that although the agency said that the 8-hour battery life requirement was overstated and that the estimated use ratios were inaccurate, these provisions remain the same in the new solicitation, as amended.