

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

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FILE: B-183706  
B-184415

DATE: November 17, 1975

MATTER OF: Automated Datatron, Inc.  
Exspeedite Blueprint Service Inc.

97730

**DIGEST:**

1. District of Columbia's cancellation of invitation after bid opening was proper upon determination that specifications for one particular item being procured overstated user's actual needs and had detrimental effect of restricting competition.
2. While fact that specifications are inadequate, ambiguous or otherwise deficient is not compelling reason to cancel invitation, absent showing of prejudice, where specification is restrictive of competition and record indicates that additional firms would bid on revised specifications included in a resolicitation, cancellation is proper course of action.
3. Cancellation of a subsequent IFB on basis that services were no longer required was erroneous where there was in fact a continuing need for the services which was being met through a noncompetitive, informal agreement with a contractor to a Federal agency--an arrangement unauthorized by statute. Recommendation is made that District discontinue present method of procurement and that services be procured through formal advertising or an intergovernmental agreement authorized by statute.

These protests concern the cancellation of two solicitations issued by the District of Columbia Department of General Services, Bureau of Material Management (District), for reproduction work, blueprints, duplication and restoration services for drawings. Automated Datatron, Inc. (ADI) protests the cancellation of invitation for bids (IFB) No. 0767-AA-75-0-5-HW (0-5-HW) while Exspeedite Blueprint Service, Inc. (EBS) protests the cancellation of the subsequently issued IFB No. 0767-AA-75-1-5-HW (1-5-HW). Each has protested on a different basis, and therefore, each protest will be discussed individually.

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In its initial report of June 2, 1975, to our Office the District explained as follows the origin of IFB 0-5-HW:

"During the past several years the District has been obtaining the requirements solicited under Invita-0767-AA 75-0-5-HW under U. S. Coast Guard contract CG-30011-(A)(1). Based on information received from the Coast Guard, that at the expiration of the aforementioned contract there would be an anticipated delay in awarding a new contract, the District for the first time issued an invitation to bid for the requirements contained in 0767AA-75-0-5-HW. This was necessary to satisfy the continuing need for these services and to maintain continuity in the printing and reproduction of various construction specifications and blueprints scheduled to be advertised.

"The U. S. Coast Guard subsequently awarded a new contract (DOT-CG-50024-A) and by agreement the District will be utilizing this contract through the remainder of Fiscal Year 1975 at which time the District will by necessity obtain its requirements elsewhere."

IFB 0-5-HW contemplated an aggregate award of a requirements-type contract for sixteen line items for the period beginning on February 1, 1975, or as soon thereafter as award was made, through January 31, 1976. Bid opening was scheduled for February 4, 1975. Of the 42 sources solicited, two responses were timely received with the low bid being submitted by ADI.

By letter dated January 29, 1975, which was received by the District after bid opening, Blocker Reprographics, Inc. (Blocker) protested to the District that the solicitation, as written, precluded all but two firms from participating in the procurement. Blocker contended, among its other grounds for protest, that the requirement in Item 1 that bidders provide an "opti-copy precision camera negative", was restrictive of competition since only two such pieces of equipment were in existence in the metropolitan area. In this regard, Item 1 read as follows:

"OFFSET PRINTING - PLANS: 1/2 size, self-cover, (white 60-lb.) 16 x 22 - Self Cover, inclusive for negatives (opti-copy precision camera negative to provide (1) optimum quality

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reproduction (2) a negative of convenient file size (8-1/2 x 11) and (3) a dylux contact proof copy (8-1/2 x 11) at no additional cost. SAMPLE TO BE FURNISHED), plates and printing black ink, one (1) side on 60 lb. white offset. Assemble and side stitch (3 stitches)" (Emphasis supplied)

Award of the contract was withheld pending the resolution of the protest by the District's Contract Review Committee. In a report dated March 7, 1975, the Committee concluded that the specifications should be rewritten and the items regrouped to reflect the District's minimum needs for the required services and, in particular, Item 1 should be eliminated from any subsequent readvertisement. On March 25, 1975, the District notified ADI and the other participating firm that their respective bids had been rejected and that the specifications were being revised. We understand that subsequent to the cancellation of IFB 0-5-HW, the District became aware that the Coast Guard had contracted with Keuffel & Esser Co. (K & E) for the same type of services and the District reverted to its prior practice of obtaining the services directly from the Coast Guard's contractor.

ADI protests the rejection of its bid on the grounds that its bid price was reasonable and accordingly, as the low responsive, responsible bidder it was entitled to award of the contract. Protester further contends that the District did not have the authority to cancel the IFB after bids were opened since the specifications as written are the same specifications that had been used in the past to satisfy the District's minimum needs and there has been no showing that the District's requirements have changed.

Subsequent to the filing of the protest, the District informed ADI and our Office that the invitation was cancelled pursuant to District of Columbia Material Management Manual, Part I, § 2620.13 (1974 ed.), essentially on the basis that the requirement of Item 1, that the contractor produce negatives by use of an opti-copy precision camera, overstated the District's needs and restricted competition. We were advised by the District that in conversations with the Coast Guard's present contractor, and other potential contractors, each indicated that while it had equipment similar to the opti-copy precision camera and could in fact perform the service, it would be precluded from competing because the specifications as written would not permit the use of any other piece of equipment. While the District advances other arguments in support of its cancellation

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of the solicitation, for the reasons stated below we believe no useful purpose would be served in discussing those additional grounds.

The authority to cancel an invitation after bids are opened is contained in District of Columbia Material Management Manual, Part I, § 2620.13 (1974 ed.) as follows:

"REJECTION OF BIDS

"A. Cancellation of Invitation for Bids after Opening

"1. Award Required

"Preservation of the integrity of the competitive bid system dictates that, after bids have been opened, award must be made to that responsible bidder who submitted the lowest responsive bid, unless there is a compelling reason to reject all bids and cancel the invitation. \* \* \*

"2. Exceptions

"Invitation for Bids may be cancelled after opening but prior to award, and all bids rejected, where the contracting officer determines in writing that cancellation is in the best interest of the District for reasons such as the following:

"a. Inadequate, ambiguous, or otherwise deficient specifications were cited in the Invitation for Bids."

As stated in Massman Construction Co. v. United States, 102 Ct. Cl. 699, 719 (1945):

"To have a set of bids discarded after they are opened and each bidder has learned his competitor's price is a serious matter, and it should not be permitted except for cogent reasons."

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The rejection of all bids after they have been opened tends to discourage competition because it results in making all bids public without award, which is contrary to the interests of the low bidder, and because rejection of all bids means that bidders have expended manpower and money in preparation of their bids without the possibility of acceptance. 53 Comp. Gen. 586 (1974), 74-1 CPD 68. Our Office ordinarily will not question the broad authority of the contracting officer to reject all bids and readvertise when a "compelling reason" to do so exists, 54 Comp. Gen. 145 (1974), 74-2 CPD 121. See 53 Comp. Gen. 586, supra; 52 Comp. Gen. 285 (1972).

With regard to the instant protest, we feel the record clearly indicates that the District's requirement for Item 1 that bidders utilize an opti-copy precision camera was restrictive of competition and that there was sufficient reason to believe that firms other than the original two bidders would bid on a resolicitation if the aforementioned requirement was omitted. In the circumstances, we conclude that a "cogent and compelling reason" existed to justify cancellation of IFB 0-5-HW.

#### Protest on 1-5-HW

Prior to the expiration of the Coast Guard's Fiscal Year 1975 contract with K & E under which the District was obtaining its printing and reproduction requirements, K & E advised the District of the possibility that it would not be able to utilize K & E's services if a new contract for Fiscal Year 1976 was not awarded by the Coast Guard. In view of this contingency, and in order to prevent any delay in its receiving the required services if such a new contract was not immediately forthcoming, the District issued IFB 0767-AA-75-1-5-HW with revised specifications including the elimination of Item 1 with its requirement for use of an opti-copy precision camera. However, on June 30, 1975, the Coast Guard entered into a new contract with K & E for Fiscal Year 1976, as a result of which K & E agreed to provide the District with the required services. Because the services were available from K & E, the District canceled the solicitation prior to the opening of bids pursuant to Part I, § 2620.7 (C) (1974 ed.) of the District of Columbia Material Management Manual.

In its protest, Exspeedite raises the following questions regarding the cancellation of the solicitation and the procurement of the required services from the Coast Guard's contractor:

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- "(1) Is it legal to use an existing contract when apparently there is no provision to do so?
- "(2) Because of the cost factor involved in the recent bid, why isn't this bid re-opened to allow all pertinent businesses to bid and more likely than not save the District Government Money?"

In regard to the first question, Exspeedite states that it was informed by the Coast Guard that while there was no provision in its contract for other agencies to utilize the services of K & E, it could not prevent the contractor from servicing the District at the contract price.

The District of Columbia Material Management Manual, Part I, § 2620.7 (C) (1974 ed.) specifically provides that an invitation may be canceled before opening of bids when it is clearly in the public interest, and it cites as an example of the "public interest" a situation " \* \* \* where there is no longer a requirement for the \* \* \* service \* \* \* ." The District's position is that upon being advised that the services would be supplied by the Coast Guard's contractor for the fiscal year, there were no longer any services that remained for procurement and that the public interest required cancellation of the invitation.

We believe the District's reliance upon this authority is inappropriate because a continuing need for these services does exist. The cancellation of IFB 1-5-HW was motivated not by the lack of a requirement for the services but because the services were to be obtained by a noncompetitive, informal agreement with a Federal contractor.

In further support of its determination to cancel the solicitation and to use the Coast Guard's contractor, the District refers to title 1, section 1-244(j) of the District of Columbia Code (Code) (1973 ed.) which reads in pertinent part:

"The Commissioner of the District of Columbia is authorized and empowered in his discretion to place orders, if he determines it to be in the best interest of the District of Columbia, with any Federal department, establishment, bureau, or office for materials supplies, equipment, work, or services of any kind that such Federal agency may be in a position to supply or be equipped to render, by contract or otherwise \* \* \* ."

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Additionally, the District cites the District of Columbia Self-Government and Governmental Reorganization Act (Act), Pub. L. 93-198, Title VII, Part D, section 731(a) (Dec. 24, 1973) which provides in part:

"For the purpose of preventing duplication of effort or for the purpose of otherwise promoting efficiency and economy, any Federal officer or agency may furnish services to the District government and any District officer or agency may furnish services to the Federal Government. Except where the terms and conditions governing the furnishing of such services are prescribed by other provisions of law, such services shall be furnished pursuant to an agreement (1) negotiated by the Federal and District authorities concerned, and (2) approved by the Director of the Federal Office of Management and Budget and by the Mayor. \* \* \*"

We do not believe either the Code or the Act provisions quoted above contemplate the informal arrangement now being used by the District to obtain these reproduction services. Title 1, section 1-244(j) of the District of Columbia Code authorizes the Commissioner to place orders for supplies or services "with any Federal department, establishment, bureau or office." However, in the instant case, no contractual agreement exists between the District and any agency of the Federal Government: the services are being performed for the District by K & E under its own informal arrangement which can be terminated at any time.

Section 731(a) of Pub. L. 93-198 also speaks of intergovernmental agreements, which are lacking here, and which are subject to certain approvals, which do not appear to have been obtained. Moreover, we believe section 731(a) pertains to services rendered by employees of the District or the Federal Government to the other entity. Although the legislative history of section 731(a) is of no material aid in the interpretation of that provision, we note that the statute applies only to services (supplies are excluded) and does not expressly mention the securing of services through contracts with private individuals or firms.

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Since there is no Federal Supply Schedule in effect for these services and since the District's requirement exceeds \$2,500, a non-competitive purchase order to a supplier is precluded. See District of Columbia Material Management Manual, Part I, § 2620.22(F) (1) (c) and (d) (1974 ed. ).

Therefore, the only methods available to the District for obtaining these services are an intergovernmental agreement pursuant to the authority of title 1, section 244(j) of the District of Columbia Code or section 731 (a) of Public Law 93-198, or a competitive, formally advertised procurement such as IFB 1-5-HW. That solicitation was an appropriate vehicle for obtaining the reproduction services and its cancellation was erroneous. We are therefore recommending to the District that it cease procuring these services from K&E under its informal arrangement with that firm and that the District conclude an interagency agreement or formally advertise for the services as soon as is practicable.

  
Deputy Comptroller General  
of the United States