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DECISION

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

FILE: B-216932 **DATE:** March 27, 1985

MATTER OF: PetroElec Construction Company, Inc.

DIGEST:

1. Where a material invitation provision is too vague, misleading or ambiguous to assure that an award will satisfy the government's actual needs, the IFB may be canceled after bid opening.

2. A protester's claim that it bid based on an industry standard that would have assured performance in accordance with an agency's requirement not expressed in the IFB does not render improper a cancellation based on the absence of this requirement where: (1) the protester submits no evidence, beyond its own unsupported statements, that the claimed industry standard exists; (2) tasks under the IFB are such that the agency reasonably assumed that, absent a specific requirement, bidders would not plan on performing as the agency intended; and (3) even if the industry standard does exist, the absence of a specific requirement from the IFB might be viewed by bidders as relaxing the standard for the particular procurement.

PetroElec Construction Company, Inc. (PetroElec), protests the cancellation after bid opening of invitation for bids (IFB) No. N62474-84-B-9511 issued by the Department of the Navy for maintenance of lighting fixtures under a requirements contract at the Mare Island Naval Shipyard, Vallejo, California. PetroElec contends that the IFB deficiencies cited by the Navy as justifying cancellation do not constitute a compelling reason to cancel since the government's actual needs would be served by an award of a contract. We deny PetroElec's protest.

Six bids were received under the IFB. PetroElec's bid of $172,891 was low, the second low bid being $184,810. Immediately following bid opening, Navy procurement

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officials met with PetroElec to review the company's bid. At the meeting, the Navy raised the possibility of error in PetroElec's bid because it was inordinately low compared to the government's estimate of $319,663 for the work. PetroElec, however, confirmed its bid. Subsequent to the meeting with PetroElec, the Navy notified all the bidders that the IFB was being canceled because of inadequate and ambiguous specifications.

The primary reason for cancellation, according to the Navy, was the omission of a specification from the IFB calling for a journeyman electrician to be assigned by the contractor to every work order for lighting repair or maintenance. The Navy declares that after its meeting with PetroElec, it became apparent that the IFB requirement for only "one journeyman electrician per crew" did not clearly express the intended "every work order" requirement. An electrician reportedly must perform all electrical work due to the danger of fire resulting from improperly performed electrical work. Citing the vast number of electrical repair work orders (5,800 out of 16,830 total work orders last year) and the fact that personnel at the shipyard simply are unable to inspect the performance of each work order, the Navy claims it can assure that an electrician will perform all electrical work only if an electrician initially responds to each work order.

PetroElec argues that this defect is not of such a magnitude that the government's minimum needs could not be met by an award to PetroElec. PetroElec asserts that it interpreted the IFB's one journeyman electrician per crew requirement to mean that a journeyman electrician would respond to every work order to ascertain if electrical circuits were shut off prior to work being performed by other crew members and to check after the completion of the work to ensure that it was performed in a safe manner; it claims this is the industry standard. PetroElec acknowledges that a journeyman electrician is needed to perform work involving the repair and maintenance of electrical circuitry, but sees no need for an electrician to be present to oversee bulb replacement, washing of reflectors and diffusers, and replacement of sockets and ballasts. PetroElec maintains that if the Navy is requiring the presence of a journeyman electrician to supervise all work, whether it involves electrical circuitry or not, then

this requirement exceeds the government's minimum needs and is not a proper compelling reason for the cancellation of the IFB.

Federal Acquisition Regulation, 48 C.F.R. § 14.401-1 (1984), requires that cancellation of invitations after opening only be undertaken for compelling reasons. Our Office, too, has held that because of the potential adverse impact on the competitive bid system of canceling an invitation after all bid prices have been exposed, cancellation must be based on cogent and compelling reasons. Downtown Copy Center, 62 Comp. Gen. 65 (1982), 82-2 C.P.D. ¶ 503. The procuring agency has broad discretion in determining if a cogent and compelling reason exists, however, and a decision to cancel an invitation after bid opening will not be disturbed unless that decision lacks a reasonable basis. Jackson Marine Companies, B-212882, Apr. 10, 1984, 84-1 C.P.D. ¶ 402. In general, where the invitation provisions are too vague, misleading or ambiguous to assure that a contract award will satisfy the government's real requirements, the government's interests have been sufficiently prejudiced as to justify canceling an IFB after opening and resoliciting the requirement. Com-Tron, Inc., B-209235, May 9, 1983, 83-1 C.P.D. ¶ 486; Meds Marketing, Inc., B-213352, Mar. 16, 1984, 84-1 C.P.D. ¶ 318.

We believe cancellation was justified here. The Navy's stated need for a journeyman electrician to respond to each work order is warranted in light of the potential fire danger. Considering the large number of work orders in the past involving electrical work, the requirement that an electrician respond to every work order, at least to determine initially whether his services are necessary, seems to be a reasonable means of assuring, to the extent possible, that all electrical work will be performed by electricians. We will not question an agency's determination of its actual minimum needs unless there is a clear showing that the agency's determination has no reasonable basis. Ridg-U-Rak, Inc., B-211395, Aug. 8, 1983, 83-2 C.P.D. ¶ 179. We agree with the Navy, furthermore, that the IFB did not adequately express this requirement. The Navy wanted an electrician to determine if electrical work was needed but, under the IFB, a contractor could assign a journeyman electrician to every crew and send one out on a work order only after some other

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worker determined that an electrician was needed. This would not meet the Navy's needs.

PetroElec's assurance that it is industry practice to have a journeyman electrician respond to every work order is unpersuasive. PetroElec has submitted no evidence--beyond its own self-serving statements--that any industry standard exists in this area, or that such a standard alone clearly would be sufficient to bind it or any other contractor to assign journeyman electricians to every work order as the Navy intended. In any event, even if the industry standard is as PetroElec claims, we think the IFB requirement for a journeyman electrician per work crew could be mistakenly viewed as establishing some lesser standard for the work here, contrary to the Navy's intent. We thus think it was reasonable of the Navy to assume that, absent a specific requirement otherwise, bidders, including PetroElec, would not plan on sending a journeyman electrician on every work order.

We conclude that the IFB did not adequately set forth the Navy's need for a journeyman electrician to respond to every work order and that, since an award therefore would not assure performance in accordance with the Navy's actual needs, cancellation of the IFB was proper.

PetroElec's protest is denied.

for Seymour Efros
Harry R. Van Cleve
General Counsel