

DOCUMENT RESUME

02369 - [A1452464]

[Cancellation of Request for Proposal]. B-187529. May 17, 1977.
5 pp.

Decision re: Host International, Inc.; by Robert F. Keller,
Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: Procurement Law II.
Budget Function: General Government: Other General Government
(806).

Organization Concerned: Federal Aviation Administration;
Marriott Corp.

Authority: 55 Comp. Gen. 802. 51 Comp. Gen. 621. B-187159
(1977). B-182843 (1975). B-185481 (1976). E-183795 (1975).

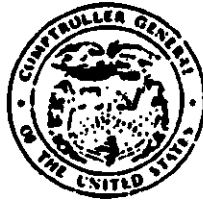
Bidder protested cancellation and resolicitation for concession food services in airport. Awardee suggested use of innovative space, whereupon agency told only awardee that the alternate space would be acceptable, denying other bidders equal opportunity to compete. Changed specifications justify resolicitation where altered competition will be likely under revised specifications. Protest was denied. (DJM)

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DECISION



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

FILE: B-187529

DATE: May 17, 1977

MATTER OF: Host International, Inc.

DIGEST:

1. Failure of procuring agency to inform all competing offerors that proposals contemplating use of concession space, which RFP specifically excluded, would be considered acceptable denied offerors opportunity to compete on equal basis and justified agency's refusal to make award to offeror provided such information.
2. Material changes in the specifications after the submission of proposals in response to a Request for Proposals justify a resolicitation when the contracting officer reasonably concludes that the competition achieved under the original specifications is not reflective of the competition likely under the revised specifications.
3. Innovation suggested by one offeror which would violate specification precluding such method of performance does not justify award to such firm without revision of specification and opportunity for all parties to compete on basis of same specification.

Host International, Inc. (Host) protests the cancellation and resolicitation of a request for proposals (RFP No. DOT-FA-DA-75-7) by the Federal Aviation Administration, Department of Transportation (FAA). Host contends that because it had been selected for contract award under the original RFP, the cancellation and resolicitation will result in serious prejudice to Host and that no compelling reason exists for such a course of action.

The original solicitation required the establishment and operation of food and beverage concessions at Dulles International Airport for a period of 10 years with an option to the FAA to extend for an additional 5 years. As amended, the RFP provided that "[space designated as] Area

B-187529

8 will be withdrawn from the assigned area within the first two years of the contract period and should not be included in development plans." Area 8 is located close to the center of the passenger terminal's main floor and is currently used as a cocktail bar. After receipt of the RFP, Host contacted the chairman of the FAA's evaluation board and suggested that the FAA's space problem which, in part, led to the contemplated withdrawal of Area 8, could be solved by utilizing other terminal space of equal size which was less desirable for use as a cocktail bar. Host was led to believe that a proposal based upon this suggestion would be accepted. However, none of the other offerors was informed that Area 8 was available and that the serving of alcoholic beverages in Area 8 would be permitted. Host's proposal which included the use of Area 8 was selected by the FAA for contract award and Host contends that at the urging of the FAA it began preparations for assuming operation of the concessions.

The Marriott Corporation (Marriott) protested to this Office. After a review of the selection process, the FAA concluded that all offerors should have been notified of the availability of Area 8 for serving alcoholic beverages. The FAA then cancelled the RFP and it intends to issue a new solicitation. Marriott withdrew its protest and Host protested the cancellation and resolicitation to this Office. Since that time, the FAA proposes to incorporate into the new RFP additional space changes which will require substantial revisions in the offerors' proposals.

Host contends that the decision not to inform the other offerors of the availability of Area 8 for a cocktail bar was necessary to avoid disclosing an essential and creative aspect of Host's proposal, and that the changed status of Area 8 was immaterial because the change involved no reduction in the total space available for the concessions. In addition to the time and money spent in preparation for the operation of the concessions, Host contends that it will be further prejudiced by the resolicitation because during the course of the initial protest Marriott apparently received pricing information from a Government official regarding Host's proposal and that similar information regarding Marriott's proposal was not available to Host or to the other offerors.

B-187529

It is a fundamental principle of competitive procurement that offerors must be treated equally and be provided a common basis for the submission of their proposals. Union Carbide Corporation, 55 Comp. Gen. 802 (1976), 76-1 CPD 134. We believe that the availability of space for a cocktail bar in the center of passenger traffic within the airline terminal is material information without which no offeror could fairly compete. The fact that use of the space may have resulted from a creative suggestion from Host does not warrant providing Host with a more favorable specification than was provided to all other offerors. It is recognized as unfair to transfuse the innovative ideas of one offeror to his competitor. 51 Comp. Gen. 621 (1972). However, the rule does not extend to a basic change in the announced ground rules for the competition. See Union Carbide, supra.

We believe that an award to Host could not have been made without substantial prejudice to the other offerors. Such an award would have been contrary to Department of Transportation Procurement Regulations § 12-3.5)07 which prohibits giving information to a prospective offeror about an RFP unless the information is promptly furnished by amendment to all prospective offerors and specifically states that no award shall be made in the absence of such an amendment. There remains the question whether the FAA properly decided to cancel the RFP and resolicit the requirement with the competition open to all rather than amend the RFP to include Area 8 and reopen negotiations only with the original offerors.

Under negotiation, unlike formal advertising, material changes may be made in the solicitation after submission of initial proposals and prior to award. Here we have concluded that, in fact, a material change was communicated to one offeror but not another. Other changes are also in the making. Whether changes require simply an additional round of best and finals, a redetermination of the competitive range or a new solicitation depends on the effect of the change on competition. Where the contracting officer in the reasonable exercise of his discretion concludes that the changes have so altered the situation that the competition achieved is not reflective of the competition likely under the revised specifications, resolicitation of the procurement is justified. See Semiconductor Equipment Company - Reconsideration, B-187159, May 4, 1977, 77-1 CPD ____.

B-187529

We believe the determination of the FAA that the best interest of the Government required the cancellation and resolicitation under an amended specification was reasonable. The specific location of an alcoholic beverage facility is very important to its profitability. The significance of Area 8 cannot be isolated from the utilization plans for all other areas. Its change of status would require restudy and possibly substantial revisions of the planned uses of all other areas in order to insure a comprehensive and integrated food and beverage proposal plan for the terminal. Such revisions could be tantamount to the submission of new proposals by the original offerors. Further, it is at least probable that the unavailability of Area 8 for beverage purposes influenced some potential offerors not to participate in the original competition.

While the details of the additional changes to be made in the resolicitation have not been revealed to the offerors, they involve the deletion of approximately twenty (20) percent of the space originally allocated for the concessions and replacing it with slightly more space in different locations within the terminal building. The original specification no longer reflects the actual needs of the FAA and the changes require a substantially revised specification for the resolicitation. Therefore, the situation existing at the time of the cancellation of the original RFP no longer prevails and a new solicitation to procure its current and actual needs is appropriate. Communications Design, Incorporated, B-182843, May 15, 1975, 75-1 CPD 298; Infodyne Systems Corporation, B-185481, July 12, 1976, 76-2 CPD 33; Cottrell Engineering Corporation, B-183795, September 22, 1975, 75-2 CPD 165. In view of the changed requirements, we know of no basis on which Host's suggestion that the resolicitation be restricted to the original offerors could be accepted.

It is unfortunate that an official of the Government told Marriott that its proposal offered the FAA a financial return of approximately \$2,000,000 more than the Host proposal. However, in our view, this did not prejudice the interests of Host or compromise the contents of its proposal to an extent which would justify eliminating Marriott from the new competition or requiring the revelation of the prices of all original offerors. Host and Marriott

B-187529

are now both aware of the difference in their proposals from the standpoint of anticipated return to the Government. Further, the inclusion of Area 8 and the additional substantial changes referred to above would appear to render obsolete all previous proposals and, therefore, less useful any information regarding them. The fear of Host that Marriott may have been given additional material details of its proposal is based upon speculation which finds no support in the record.

Accordingly, the protest of Host is denied.


Deputy Comptroller General
of the United States