

*M. Eaton, PL-2*

**DECISION**



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

**8030**

**FILE: B-192054 DATE: October 12, 1978**  
**MATTER OF: Banshee International, Inc.**

**DIGEST:**

1. Agency determination to cancel RFP is justified after award of contract and termination of contract for convenience of Government where solicitation failed to advise offerors of cost factor which may be added to proposals and where agency is reconsidering its needs.
2. Request for proposal preparation costs is denied since it has not been shown that agency acted arbitrarily or capriciously in canceling the RFP.

Banshee International, Inc. (Banshee) has protested the Department of Transportation, United States Coast Guard's (Coast Guard) actions under request for proposals (RFP) No. 60-78-1910 for the purchase of 40 sailing dinghies, for use at the Coast Guard Academy.

Banshee initially protested the award of a contract under RFP -1910 to Performance Sailcraft, Inc. In its initial protest, Banshee essentially raised four issues: (1) the Coast Guard had violated the Buy American Act, 41 U.S.C. 10a-10c; (2) Performance's dinghy failed to meet certain specification requirements; (3) Banshee's proposal was evaluated on factors not stated in the RFP; and (4) Performance "does not appear to qualify as a [small business concern] and no consideration was given this factor."

After the protest was filed, the Coast Guard terminated Performance's contract for the convenience of the Government because it determined that the contract had been improperly awarded to Performance. Thereafter, the Coast Guard canceled the subject RFP on the grounds that the RFP contained ambiguous specifications and did not contain evaluation criteria.

The Coast Guard has further advised our Office that it is reconsidering its requirement for sailing dinghies both for cadet training and for national and international competition and would eventually re-structure solicitations to meet those needs.

We believe the questions of whether the Buy American Act was properly applied and whether Performance's offer complied with the specifications have been mooted by the termination of Performance's contract. In addition, since Banshee did not protest the failure of the Coast Guard to set aside the procurement for small business concerns prior to the closing date for initial proposals, that portion of its protest is untimely filed and will not be considered. 4 C.F.R. § 20.2(b)(2).

The sole issue which remains of Banshee's initial protest is that the Coast Guard improperly evaluated the proposals by using an evaluation factor not stated in the RFP. We believe the Coast Guard's termination of Performance's contract amounts to an admission that this argument has merit.

We understand that the boathouse racks used for storage at the Coast Guard Academy must be modified in order to accommodate boats beyond a certain hull depth. Although no mention of this fact was made in the RFP, it appears that in evaluating Banshee's proposal the Coast Guard added to Banshee's price the cost of remodeling the boathouse racks. To do so without advance notice to the offerors was improper. Offerors should be advised in the solicitation of any storage restrictions which may exist and of the dollar amount of any evaluation factor to be added to any proposal which would necessitate the Government incurring the expense of modifying the racks.


In addition to terminating Performance's contract the Coast Guard canceled the RFP. Upon learning of this action, Banshee objected to the cancellation, maintaining that negotiations should have been conducted with it (and presumably any other offerors).

Our Office has long recognized that the criteria for cancellation of a formally advertised procurement contained in Federal Procurement Regulations (FPR) 1-2.404-1(b) (1964 ed.) are applicable to the cancellation of an RFP. Infodyne Systems Corp., B-185481, July 12, 1976, 76-2 CPD 33. FPR § 1-2.404-1(b) provides in pertinent part that invitations for bids may be canceled after opening but prior to award where the solicitation did not provide for consideration of all factors of cost to the Government. A contracting officer has broad discretion in deciding whether a solicitation should be canceled and our Office will not object to such a determination unless it is shown to be unreasonable. Infodyne, supra.

In the instant case, not only did the solicitation fail to advise offerors of an important evaluation criterion, but the Coast Guard has indicated that the adequacy of the specifications and their suitability for different purposes were in need of review. (The Coast Guard report suggests that the specifications appropriate for dinghies used for cadet training may differ from those for dinghies used by the Academy in national and international competition.) Therefore, we do not believe the contracting officer abused his discretion in canceling the RFP.

Finally, Banshee's request for preparation costs must be denied. In order to recover proposal preparation costs an offeror must show that an agency has acted arbitrarily or capriciously. William D. Freeman, M.D., B-191050, February 10, 1978, 78-1 CPD 120. Here, we have determined that there was a reasonable basis for the Coast Guard's decision to cancel the RFP.

Accordingly, Banshee's protest and request for proposal preparation costs are denied.

  
Deputy Comptroller General  
of the United States