



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20541

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B-178282

JUL 27 1973

IMED Corporation  
11696 Sorrento Valley Road  
Suite C  
San Diego, California 92121

Attention: Mr. Douglas P. Rumberger  
National Sales Manager

Gentlemen:

We refer to your letter of March 21, 1973, with enclosures, protesting against the rejection of the IMED Corporation (IMED) proposal under request for proposals (RFP) No. DEAI20-73-R-1270, issued by the Defense Personnel Support Center, Philadelphia.

The procurement covered the furnishing of 31,250 boxes of electronic thermometer probe covers, FEV 6515-458-7975, or a total of 7,812,500 covers, and was to be negotiated under 10 U.S.C. 2304(a)(7). Being the initial procurement of the item under a newly developed specification, negotiations were considered to be necessary so as to determine specification adequacy and reasonableness of price in the event of a lack of competition.

Because the forwarding letter accompanying the IMED proposal indicated that the IMED offer was contingent upon approval of a number of deviations from the specification, the Directorate of Medical Materiel was requested to evaluate the proposed deviations and determine whether such deviations would be acceptable. The requested deviations were not approved because it was felt that an item produced without a metallic sensing tip would not respond as rapidly and, possibly, not as accurately and that the immediate container of 10 covers must remain sterile until opened to reduce the possibility of cross-contamination from patient to patient. IMED was notified of this determination. IMED then requested reconsideration of its proposed deviations and presented data in support thereof. IMED was then contacted telephonically by the

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contracting activity and informed that the metallic tip requirement was an essential characteristic adopted by the Defense Medical Materiel Board (DMMB) which the DMMB indicated could not be waived since the performance characteristics of an all-plastic item were unknown. It was, however, suggested that IED might submit its item to DMMB for its consideration.

Subsequent coordination between IED and DMMB resulted in an agreement that user tests would be conducted on the IED covers to determine whether or not they were acceptable for the needs of the military. Such tests are being conducted at this moment. In the event that the tests indicate that an all-plastic item is acceptable, the specifications will be revised appropriately to allow for the procurement of either an all-plastic cover or one with a metal tip. In view of these facts, the contracting officer determined that the specifications required review for possible revision and, accordingly, cancelled the solicitation by means of amendment No. 0001 to the RFP.

We cannot take issue with the determination to cancel the solicitation. Paragraph 2-404.1(b)(i) of the Armed Services Procurement Regulation (ASPR) provides for cancellation of a formally advertised procurement when the specifications are determined to be inadequate; ASPR 2-404.1(b)(ii) permits cancellation when the specifications have been revised. Our Office has long recognized that these principles also apply to negotiated procurements and that contracting officers are clothed with broad powers of discretion in deciding whether a negotiated procurement should or should not be cancelled. We will not interfere with such a determination unless it is arbitrary, capricious, or not based upon substantial evidence. B-169492, July 17, 1970.

Our review of the record discloses no evidence of an abuse of administrative discretion. Accordingly, we will interpose no objection to the cancellation of the solicitation and the issuance of a new procurement with possible revisions.

Sincerely yours,

E. H. Morse, Jr.

For the Comptroller General  
of the United States