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**DECISION**

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

[Protest of IFB Cancellation]

FILE: B-200753

DATE: March 13, 1981

MATTER OF: Honolulu Disposal Service, Inc.

**DIGEST:**

Cancellation and resolicitation of refuse collection service requirement was improper since contracting officer by failing to compound assumed inflation rate erroneously calculated inflation factor to find bid to be unreasonable as to price.

Honolulu Disposal Service, Inc. protests cancellation of Lot II of invitation for bids (IFB) DAHC77-80-B-0280 for a multi-year contract for refuse collection services required by the Army at the Schofield Barracks, Fort Shafter, Hawaii. The protester also complains that in resoliciting this requirement (IFB DAHC77-81-B-0011) the Army departed from prior practice by refusing to limit participation to small businesses and by deleting the bid bond requirement. Further, the protester says that the procedures used by the Army in negotiating an interim extension of the prior contract were irregular. Since we sustain Honolulu Disposal's protest regarding cancellation of the original solicitation, the other issues raised by the protester need not be considered.

The IFB contained eight line items, four of which were designated as Lot I and the balance as Lot II. Only Honolulu Disposal bid on Lot II. Its prices, as evaluated, were as follows:

	Program Duration		
	<u>Single year</u>	<u>2 years</u>	<u>3 years</u>
<u>Lot II only</u>			
Honolulu Disposal Service, Inc.	\$206,974.41	\$206,974.41 per year	\$206,974.41 per year

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The IFB (1) required that prices be submitted for the first program year; (2) stated that "prices may be submitted for the total multi-year requirements (two (2) or three (3) program years)"; and (3) required that the multi-year prices "be the same for all program years." Included in the IFB was a statement reserving the right to the Government "to disregard the bid on the multi-year requirements and to make award only for the first program year" if only one bid was received. Bidders were advised that award would be made "from one of the three alternatives" (one, two or three years) "that reflects the lowest price to the Government."

Regarding Lot II, the contracting officer found that the price bid:

"represented a 25.36 % increase over the current contract price of \$165,103.54 when taking into consideration discounts for prompt payment as follows:

DAHC77-80-B-0280	DAKF14-78-C-0026
<u>Honolulu Disposal Svc., Inc.</u>	<u>The Refuse, Inc.</u>
with 1/2 % discount --	with 2 % discount --
\$206,974.41	\$165,103.54
\$ 206,974.41 -	\$ 165,103.54 = \$41,870.87
\$ 41,870.87 ÷	\$ 165,103.54 = 25.36 %

Furthermore, since Honolulu Disposal Service, Inc.['s] bid prices were identical for all program years, award on a three (3) program years' basis would have resulted in a total increase of \$125,612.61 over the next three years as compared to the current contract price. This is in contrast to the yearly Consumer Price Index rates, furnished by Data Resources, Inc. for the Defense Contract Audit Agency, which reflect a downward trend in inflation from 13.5 % for 1980 to 9.2 %, 9.0 %, and 9.4 % from 1981 thru 1983 respectively."

Because the contracting officer was unable to "reconcile this significant disparity between the anticipated average inflation rate of 9.2 percent and Honolulu's 25.36 percent increase," he determined that Honolulu's bid was unreasonable as to price and rejected it.

(A determination that a bid price is not reasonable is a matter of administrative discretion often involving the exercise of sound business judgment which our Office will not question unless the determination is unreasonable or there is a showing of bad faith or fraud.) Espey Manufacturing and Electronics Corporation, B-194435, July 9, 1979, 79-2 CPD 19. Moreover, in making such a determination the contracting officer may compare bid prices with a Government estimate, past procurement history, and current market conditions, as well as other relevant factors. G.S.E. Dynamics, Inc., B-189329, February 13, 1978, 78-1 CPD 127; Westinghouse Electric Corporation, 54 Comp. Gen. 699 (1975), 75-1 CPD 112.

Although the protester views the Army's actions in canceling the solicitation and reprocurring the Lot II requirement as malicious, (we do not believe the record shows bad faith or fraud by Army personnel. We believe, however, that the contracting officer's finding was not reasonable.)

As indicated, (the solicitation evaluation criteria required that offers be considered on a one, two and three-year basis and that award would be made on whichever basis proved to best serve the Government's interest. While it is true that the IFB reserved the right to award on a one-year basis if only a single responsive bid were received, there is no indication in the record that the Army concluded that award otherwise would be limited to a single program year. In addition, (we believe that under the terms of the IFB the contracting officer was required to consider the reasonableness of Honolulu Disposal's prices for each of the three possible evaluation periods if the bid was to be fairly evaluated.) Apparently, he understood his obligation in this regard, because he indicates in his report that he considered multi-year projected inflation rates in reaching his decision. However, (we believe the contracting officer's conclusion was based upon an erroneous calculation of the inflation factor for the multi-year period. Thus, while we agree that the protester's price can reasonably be found to be unreasonable for the single year requirement, we do not believe the same finding is reasonable when the three-year price is considered.)

For example, the contracting officer states that he compared the protester's constant annual price with his estimated "average" 9.2 percent inflation rate, but he did

not recognize that, while the protester's prices would not change for three years, the impact of inflation would increase because the 9.2 percent average annual rate would compound. [As the protester also correctly points out, the contracting officer failed to apply the 9.2 percent rate consistently since he overlooked the fact that the incumbent's price was set two years earlier at a fixed rate. Compounded, a 9.2 percent rate results in more than a 30 percent three-year increase. If the 13.5 percent 1980 Defense Contract Audit Agency (DCAA) price index is used to project the effect of inflation on a mid-term fixed 1978-1980 contract price, the total increase by the third contract year produces a 48 percent jump -- almost double the 25 percent figure which the contracting officer found objectionable.]

The contracting officer's legal adviser, in a memorandum supporting the contracting officer's determination, cites various cases in which our Office has upheld a determination that bid prices were unreasonable where the determination was based on price increases ranging from seven to 22 percent. None of those cases, however, dealt with the problem presented here, i.e., where an inadequate analysis resulted in the rejection of a bid which, expressed in constant dollars, was comparable to the standard of comparison the Army selected (the prior contract price).

In this regard we have calculated the projected increase in the prior contract (out-of-pocket) cost which the contracting officer should have computed had he calculated an estimated price assuming inflation at the DCAA rates compounded for the three-year performance period commencing with FY 1981. We have also compared the FY 1980 (The Refuse) price with prices bid by the protester by expressing each in constant dollars. Since Lot II for the prior and follow-on contracts differ slightly, some alteration must be made to account for this difference. Applying a pro rata adjustment to reflect changes in the scope of work, our calculations indicate that Honolulu Disposal's price is actually less than the projected cost based on the prior contract. It is within a few percent of expected cost even if increased work is not considered. [Reviewing the relative value of the protester's and incumbent's prices expressed in constant dollars, we also find that the average value to be paid under the Honolulu Disposal bid is more than the prior contract price but less than that price which would be expected were a modest adjustment made for increased work.]

Assuming some reasonable allowance for the change in the scope of the work, therefore, Honolulu Disposal's price must be considered to be within a percent or so of what the record before us suggests the Army should have expected. The record provides no basis for a finding by the Army that Honolulu prices were unreasonable.

A further comment is appropriate regarding a secondary concern raised by the contracting officer in his report. There he explained that in the past contractors had favored the three-year arrangement because it permitted them to amortize equipment over a longer period of time. Since the contracting officer did not see such a decline in Honolulu Disposal's pricing, he believed the protester was attempting to reap a windfall in the second and third contract years when lower equipment costs would be incurred. Our analysis of the effect of inflation indicates, however, that the cost of Honolulu Disposal's pricing does decline significantly in the second and third years when measured in constant dollars. Indeed, the value Honolulu Disposal would receive in the second year is comparable to that paid under the last year of the incumbent's contract. The value paid in the third year of a Honolulu Disposal contract would be significantly less.

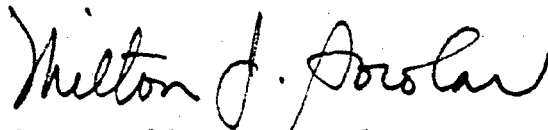
As indicated by Defense Acquisition Regulation § 2-404.1 and by prior decisions of our Office, protection of the integrity of the competitive bid system requires that an award be made once bids are publicly opened unless there exists a compelling reason to reject all bids and cancel the invitation. Dominion Engineering Works, Ltd., et al., B-186543, October 8, 1976, 76-2 CPD 324. Absent some rational basis to support rejection of the protester's bid, cancellation of IFB DAHC77-80-B-0280 was improper.

We are aware, of course, that since this solicitation was canceled the Army negotiated and awarded an interim extension of the incumbent's contract and has recently awarded that firm a follow-on contract following resolicitation. Insofar as can be determined by the record before us, the Army should terminate the follow-on contract for the Government's convenience, reinstate solicitation DAHC77-80-B-0280, and award a contract to Honolulu Disposal under it.

Consequently, we recommend that the Army determine whether such action is practical at this time and otherwise legally appropriate. Since the contract is one for services and since

the incumbent has simply continued performing services for which presumably it already had equipment, termination costs should be limited. In considering the weight to be attached to termination costs, if any, the Army should keep in mind the importance of taking corrective action to protect the integrity of the competitive procurement system.

This decision contains a recommendation for corrective action to be taken. Therefore, we are furnishing copies to the House Committee on Government Operations, the Senate Committee on Governmental Affairs, and the House and Senate Committees on Appropriations in accordance with section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. § 1176 (1976), which requires the submission of written statements by the agency to the Committees concerning the action taken with respect to our recommendation.



Acting Comptroller General  
of the United States