

Mr. Ayer

19513

DECISION



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

FILE: B-201295

DATE: September 23, 1981

MATTER OF: Norfolk Dredging Company

DIGEST:

1. Agency may properly cancel solicitation after bid opening and low bidder's reduction of price, where agency determines that even at lower price sufficient funds are not available for contract award.
2. Protest against allegedly improper practices in preparation of Government estimate is denied since allegations are unsupported and protester has failed to meet burden of proof.

Norfolk Dredging Company protests the procedures used by the U.S. Army Corps of Engineers in procuring its requirement for berm and dune restoration at Wrightsville Beach, North Carolina.

Norfolk was the low bidder, at \$4,976,630, under invitation for bids (IFB) No. DACW54-80-B-0038. The Government estimate was \$3,767,593 and the funds available for award were \$4,556,800.

Norfolk protested the accuracy of the Government estimate to the agency following bid opening. The Army thereupon raised the estimate to \$4,002,011. However, the funding available remained at \$4,556,800.

Because all bids exceeded available funds, the IFB was canceled. Norfolk then submitted a modification of its low bid reducing its price to \$4,700,000. This was rejected because it again exceeded the funds available.

Norfolk was the low bidder on the resolicitation with a bid of \$4,228,963. On November 25, 1980, Norfolk accepted the award.

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Norfolk acknowledges the propriety of the cancellation, agreeing that a contracting officer cannot make an award in an amount exceeding available funds. We have taken the position that an agency's determination that funds are not available for contract obligation is a sufficient reason upon which to cancel a solicitation and it is not our role to object to the unavailability of funds. See Ocean Data Systems, Inc., B-180248, August 16, 1974, 74-2 CPD 103. It is, therefore, clear that the first solicitation was properly canceled notwithstanding Norfolk's unilateral modification lowering its price because even the reduced price exceeded the funds available.

Norfolk's principal objection is to the Army's solicitation of a procurement when the Army knows or should have known that the available funding was insufficient. Norfolk urges that funding is insufficient when the agency does not have sufficient funds available to make an award up to an amount 25 percent over the Government estimate.

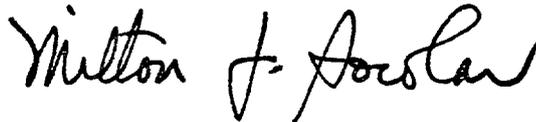
We are unaware of any statutory or regulatory provision imposing this requirement on the Army.

Norfolk makes a general allegation that the Army estimate was initially based on the available funding and not on the realistic cost of performance. Norfolk argues that this places an unfair risk on bidders and that when the IFB is canceled, after bid opening, it creates an auction situation since all bidders are aware of the low bid under the first solicitation.

Even if we assume, for the purposes of argument, that an auction situation could result from an improperly based estimate, Norfolk's contention, that the estimate was in fact improper, is an unsupported allegation. The Army reports that the estimate was properly prepared and later modified upward to compensate for the effects of inflation following Norfolk's protest that it was unreasonably low. It is Norfolk's responsibility to present sufficient evidence to affirmatively establish its position.

Phelps Protection System, Inc., B-181148, November 7, 1974, 74-2 CPD 244. Lacking probative evidence, we find Norfolk's allegation speculative and conclude that it has failed to meet its burden of proof.
Mission Economic Development Association, B-182686, August 2, 1976, 76-2 CPD 105.

Accordingly, the protest is denied.

A handwritten signature in cursive script that reads "Milton J. Fowler".

Acting Comptroller General
of the United States