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DECISION



21601 Kildee

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

FILE: B-203580

DATE: April 23, 1982

MATTER OF: Ellis Construction, Inc.

DIGEST:

1. Rejection of bids and readvertisement of construction project by grantee because bids received were excessive in relation to grantee's cost estimate was proper exercise of discretion, where complainant is unable to show that estimate used was unreasonable or that the estimate was created by grantor agency after the bid rejection.
2. Fact that two bids were received or that no design changes were made does not affect validity of cancellation and readvertisement of project by grantee because cancellation was properly based on unreasonableness of prices bid under initial advertisement.
3. Failure of grantee to withhold award pending resolution of complaint by GAO or to notify GAO of award is not legally objectionable as grantee is not required to withhold award or notify GAO that award is to be made.

Ellis Construction Company complains about the rejection of all bids received for the construction of restroom facilities for the handicapped and the readvertisement of the requirement by the Redevelopment Authority (Authority) of the County of Delaware, a subgrantee under a Department of Housing and Urban Development (HUD) grant awarded to the County of Delaware, Pennsylvania. The Authority allotted \$19,000 obtained under a Community Development Block Grant to the Springfield School District towards the project with the understanding that the School District would fund the remaining cost.

Ellis contends that because prices were reasonable and competition adequate under the original advertisement, cancellation and readvertisement were unjustified. We have no reason to object to the actions taken by the Authority or HUD's concurrence with those actions. The complaint is therefore denied.

Two firms responded with the following bids to the Authority's initial notice to bidders which according to local law was published in a newspaper of general circulation:

Ellis Construction, Inc.	\$43,875
Iannucci & Wren	47,035

Acting upon the School District's advice that prices bid were excessive and the competition received inadequate, the Authority rejected the bids. HUD reports that this determination was based on the School District's view that the prices bid were excessive compared to its architect's estimate that the project's cost should be in the "mid-\$30,000 range." HUD indicates that the original estimate for the project was \$25,000 but states that this figure, which was developed 16 months prior to the initial solicitation of bids, was adjusted for inflation "immediately prior to bidding." The same project was readvertised shortly thereafter. Three firms submitted the following bids on the readvertised work:

John T. Duffy, Inc.	\$37,800
Iannucci & Wren	47,035
LML Corporation	47,800

The School District recommended acceptance of John T. Duffy Inc.'s \$37,800 bid and the Authority awarded the contract to that firm.

Ellis complains that the cancellation and the readvertisement of the project, without any changes in the project design or requirements, was unreasonable because adequate competition was received under the initial procurement. Ellis further argues that its price was reasonable and contends that the "mid-\$30,000" estimate cited by HUD as justification

for the cancellation did not come into existence until after the procurement was canceled. In any event, Ellis objects to the adjustment of the original \$25,000 estimate to the "mid-\$30,000" figure as an over-compensation for inflation over the 16-month period.

HUD maintains that the Authority's cancellation of the original solicitation was a proper exercise of its discretion. HUD notes that Section 11b(2)(e) of Attachment O to Office of Management and Budget Circular A-102 governing grantee procurement provides that bids may be rejected when there are "sound documented business reasons in the best interest of the program." HUD argues that we have approved grantees' cancellations of solicitations under similar circumstances as a reasonable exercise of the grantees' discretion. In HUD's view, the factors cited by the Authority constitute the sound documented business reasons necessary to support cancellation of the original solicitation.

We agree with HUD. Both under the Attachment O standard cited by HUD and under principles applicable to direct Federal procurements, grantees or contracting activities have broad discretion to reject all bids and, in both situations, we will not question this determination unless it is unreasonable. See Concrete Construction Company, B-194077, June 7, 1979, 79-1 CPD 405. Here, the School Board and the Authority simply decided that the bids initially received were too high based on the architect's estimate. Although Ellis contends that either the estimate was improperly adjusted for inflation or that it did not exist in its adjusted form at the time the bids on the original procurement were received, neither argument is convincing.

Ellis argues that the record shows that the \$25,000 estimate was not adjusted before the first bid opening as HUD maintains, but instead, was only adjusted after the second bid opening to justify acceptance of Duffy's \$37,800 bid. To support this contention, Ellis points to the Authority's May 22 letter to that firm, written between the first and second bid openings, which states that bids were rejected after the first bid opening "due to the fact that they exceed the allocation to the Township of Springfield by almost eighty percent."

Ellis calculates that its low bid of \$43,875 exceeded \$25,000 (rather than a mid-\$30,000 figure) by 80 percent, which it argues, proves that the architect's estimate had not been adjusted prior to that date as reported by HUD. Ellis also suggests that the amount of the increase shows that the higher estimate was a fabrication, since an increase from \$25,000 to the mid-\$30,000s over 16 months would approximate an inflation rate of 40 percent per year.

Ellis' computations are essentially correct. The 80 percent increase reported in the Authority's letter of May 22, does, as Ellis argues, closely correspond to a base figure of \$25,000. The difficulty here is Ellis' assumption that the terms "estimate" and "allocation" are interchangeable. It seems that the Authority's letter referred to the "allocation" of \$19,000 from the Authority to fund the project rather than an estimate of the cost of the project.¹

Consequently, there is no inconsistency between the Authority's letter of May 22, which refers to funds allocated to the project, and HUD's subsequent report which deals with a separate subject, the architect's revised estimate.

We do not agree with Ellis' argument that the adjustment to the architect's estimate, by itself, shows that if the revised estimate did in fact exist, it was faulty. Many factors other than just the general inflation index can account for the magnitude of the adjustment, including the architect's experience with bids received for comparable jobs in the area during that period. Therefore, we do not find that the School District's revised estimate was unreasonable. See Lashcon, Inc., B-201833, June 4, 1981, 81-1 CPD 469. The two bids received under the initial advertisement substantially exceed the School District's estimate

¹ The Authority allocated \$19,000 in grant funds to the School District for the project with the understanding that the School District would fund the remaining cost. It appears that the figure referred to in the letter consisted of the original allocation plus whatever funds the School District proposed to contribute to the project.

for the project. Thus, the School District and the Authority had a basis to determine that the bids were unreasonably high, which we have no reason to question. See Premier Electrical Construction Company, B-201981, July 15, 1981, 81-2 CPD 37.

The fact that more than one bid was received in response to the initial advertisement or that the readvertisement contained no design changes is not relevant as the unreasonableness of the low bid price received is alone a sufficient basis for cancellation and readvertisement. See Premier Electrical Construction Company, supra.

Ellis also argues that, under state law, architects owe a duty to the owners of a construction project to plan projects which can be built for a cost reasonably near the owner's limitation on construction costs. This contention concerns the legal rights of the School District vis a vis its architect, not the validity of the contract award, and is not for consideration by this Office. Further, we do not agree with Ellis that it was improper for the Authority to invite selected contractors to bid on the readvertisement so long as the project was properly advertised, which was the case here. Finally, despite Ellis' arguments, the fact that the Authority has canceled and readvertised other projects in the past does not bear upon the question whether cancellation was justified in the present case.

Ellis contends that the Authority's award of the contract prior to the resolution of the complaint was improper since Ellis had filed its complaint with our Office in a timely manner. Ellis also notes that this Office was not furnished notice of the award. The grantee, however, was not required either to withhold award or to give notice of the award to this Office. In any event, even if the Authority were required to do so, the failure would be a procedural error not affecting the legality of the award. Premier Electrical Construction Company, supra.

Finally, Ellis seeks bid preparation costs. Under the circumstances here, where the complainant has not shown that the procurement was conducted improperly, we need not

reach the question whether bid preparation costs are available on a procurement by a Federal grantee. See The Eagle Construction Company, B-194498, March 5, 1979, 79-1 CPD 144.

Ellis' complaint and its claim are denied.

for 
Comptroller General
of the United States