

DECISION

2330
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-205661.2

DATE: October 15, 1982

MATTER OF: Allstate Flooring Company, Inc.

DIGEST:

1. Contracting agency may properly cancel an invitation for bids after bid opening where the agency determines that sufficient funds are not available to make award.
2. Where a contracting agency properly cancels a sollicitation, a disappointed bidder is not entitled to bid preparation costs.

Allstate Flooring Company, Inc. (Allstate), protests the cancellation of invitation for bids (IFB) No. DACA85-81-B-0045 issued by the Army for modernization of bathrooms in military housing at Fort Wainwright, Alaska. We deny the protest and Allstate's claim for bid preparation costs.

Bids were opened on September 25, 1981. The low bid was submitted by Steenmeyer Corporation in the amount of \$409,350 for the base items and \$1,193,206 for the base and additive items. The second low bidder was Allstate at \$493,396 for the base items and \$1,468,886 for the base and additive items. Fiscal year 1981 funds were not available. The IFB warned offerors that funds were not presently available and that no award would be made until funds were made available. On October 8, 1981, fiscal year 1982 funds were made available in the amount of \$409,350, which was sufficient to fund only the base items at the low bidder's bid price. On October 19, 1981, the Army made award to Steenmeyer.

Steenmeyer objected to the award for the base items only. On December 2, 1981, Steenmeyer filed a protest with our Office contending that the Army was obligated to make award for the base and additive items. On December 18, 1981, the Army rescinded the award to Steenmeyer. Our decision in the matter of Steenmeyer Corporation, 61 Comp. Gen. ___ (B-205661, May 10, 1982), 82-1 CPD 445, denied

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in part and dismissed in part Steenmeyer's protest, noting that Steenmeyer was no longer interested in the award at its bid price.

Allstate states that in June 1982 it learned of our May 10, 1982, decision and wrote to the Army indicating that it might be willing to revive its expired bid. In July 1982, the Army advised Allstate that adequate funds were not available to make award at a price higher than Steenmeyer's price for the base items.

By letter dated July 15, 1982, Allstate protested to the Army stating that the Army's prospects for alternate funding to obtain an additional \$84,046 above Steenmeyer's price for the base items were excellent. Allstate argued that, if additional funding became available, the Army could make award to Allstate.

By letter dated August 11, 1982, the Army denied Allstate's protest stating that there was no reasonable expectation that any additional funds would be made available and that, in view of the fact that all bids had expired, the IFB was considered canceled.

Allstate contends that, since funds are available for other projects at Fort Wainwright, our Office should direct a reinstatement of the IFB and direct the Army to give this project funding priority over current projects. Alternatively, Allstate requests bid preparation costs.

We have not requested a report on Allstate's protest from the Army because Allstate's initial submission and the Army's earlier report on Steenmeyer's protest provide adequate information for our Office to resolve the protest.

Contracting officers have broad discretion to cancel a solicitation. However, because the cancellation of a solicitation after bid opening and after prices are exposed tends to discourage competition, the Defense Acquisition Regulation (DAR) and our decisions require that the contracting officer have a "compelling reason" to reject all bids and cancel a solicitation after bids have been opened. DAR § 2-404.1(a) (Defense Acquisition Circular No. 76-17, September 1, 1978); Bentley, Inc., B-200561, March 2, 1981, 81-1 CPD 156. In this connection,

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 that it is not our role to question the unavailability of funds. Genco Tool and Engineering Co., B-204582, March 1, 1982, 82-1 CPD 175. It is, therefore, clear that the IFB was properly canceled. See Norfolk Dredging Company, B-201295, September 23, 1981, 81-2 CPD 245.

Regarding Allstate's bid preparation costs claim, such costs can only be recovered if the Government has acted arbitrarily or capriciously. See, e.g., Allied Sales & Engineering, Inc., B-203913; B-204102, January 8, 1982, 82-1 CPD 23. In view of our conclusion that the Army properly cancelled the IFB, the protest and the claim are denied.

for 
Comptroller General
of the United States