DECISION

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

Kilde 24876

FILE: B-209765 **DATE:** April 15, 1983

MATTER OF: Arctic Corner, Incorporated

DIGEST:

An agency's cancellation of a solicitation after bid opening is not unreasonable where a bidder's protest discloses that the estimated quantity for one item is inconsistent with reasonably anticipated usage; the agency's review of the estimate indicates that it was inadvertently increased tenfold; the cost impact of the error is significant both in terms of projecting the Government's actual cost and in displacing the low bidder; and two of the bidders appeared to have suspected the error and submitted unbalanced bids on that basis, thereby gaining an unfair competitive advantage.

Arctic Corner, Inc. protests the cancellation of invitation for bids No. DABH35-82-B-0138 issued by the Procurement Division, Fort Dix, New Jersey for the repair and maintenance of family quarters at Fort Dix and nearby sites. We deny the protest.

The Army issued this invitation on August 26, 1982, seeking a contractor to furnish some two hundred separately identified and priced painting, carpentry, plumbing, and electrical services as ordered by the Army during a 1 year performance period. Four firms responded by the amended bid opening date, October 15, 1982, and based upon the estimated quantities for each item set forth in the solicitation, the total bid prices were:

Arctic Corner, Inc.	$1,382,875
E.J. Karnavas	$1,406,600
Trataros Construction	$1,560,475
Sempre Const. Co.	$2,036,109

By letter of October 20, the third low bidder, Trataros, protested to the Army that the estimated quantity for item 2.40, replace plastic laminated kitchen counter tops, of 20,000 linear feet was obviously in error and that Arctic's low bid of 45 cents per linear foot had taken advantage of this error. The Army reviewed the matter and determined that the correct estimate should have been 2,000 linear feet for this item and, in view of the magnitude of the error, that the solicitation should be canceled and reissued. The Army notified Arctic of this cancellation and extended the incumbent contractor, Karnavas, to permit resolicitation, which actions Arctic timely protested to this Office.

Arctic contends that cancellation was improper because item 2.40 is only one of several hundred items on the price schedule and that final usage never comes close to the amounts estimated. Moreover, Arctic argues that it questioned the large quantities estimated for item 2.40 and for several other items as well at the bidder's conference, and was advised that all quantities were correct. Arctic contends that therefore both the Government and the incumbent contractor, Karnavas, had reason to know that the estimate for item 2.40 was incorrect before bid opening.

Arctic has furnished information on the orders the Army has placed under Karnavas' prior contract which shows that in a number of instances the Army's estimates were markedly out of line, i.e., the prior estimate for item 250D, replacing sink bases, is 25, but some 1,133 units were actually replaced. Arctic further compares the prices Karnavas bid under the protested solicitation and the prices it is being paid under the extensions of its prior contract, and argues that the Army could have obtained a considerable cost savings by requiring Karnavas to perform the extensions at its new bid prices. Finally, Arctic argues that the contracting personnel at Fort Dix have shown favoritism towards three particular contractors and that in past procurements discrepancies in the estimates discovered after bid opening have not resulted in cancellation of the solicitation when one of the favored contractors was low bidder.

The Army explains that its estimate was based upon a doubling of the first 6 months' usage under the prior contract, which for item 2.40 was 1,122.6 linear feet. This figure was inadvertently picked up as 11,266 linear feet, extended over the 12-month period, and rounded to the 20,000 figure used in the solicitation rather than the 2,000 linear feet actually intended. The Army advises that

its representative did discuss many of the usage estimates with Arctic prior to bid opening, including the estimate for item 2.40, but that it was unaware of any error until Trataros protested after bid opening and the Army reviewed the basis of its estimate for item 2.40.

Once the magnitude of the error was discovered, the Army calculated its effect upon the bidding by estimating the percentage of the bid price item 2.40 represented for each bidder and for the Government estimate, as follows:

	Bid Item 2.40	Bid Total	Percent of Bid
Arctic	$ .45 lin ft.	$1,382,875	.7
Karnavas	$ 1.00 lin ft.	$1,406,600	1.4
Sempre	$10.00 lin ft.	$2,036,190	9.8
Trataros	$10.00 lin ft.	$1,560,475	12.8
Gov't. Estimate	$19.00 lin ft.	$1,841,085	19.5

On this basis the Army concluded that the error had a significant effect upon competition and that two firms, Arctic and Karnavas, apparently had taken advantage of the error by unbalancing their bids. The Army further concluded that if it were to ignore this item, the third bidder, Trataros, would be low, and that the error therefore had a substantial impact both upon the bidders' ability to bid intelligently and the Government's ability to obtain the lowest overall cost.

The cancellation of an invitation for bids after bid prices have been exposed can have a deleterious effect on the competitive bid system. For that reason, cancellation is improper unless there is a cogent and compelling reason which justifies the cancellation. Massman Construction Co. v. United States, 60 F. Supp. 635 (Ct. Cl.), cert. denied, 325 U.S. 866 (1945); Defense Acquisition Regulation (DAR) § 2-404.1(a). A contracting officer, however, has broad discretion in determining whether a cogent and compelling reason exists, Marmac Industries, Inc., B-203377.5, January 8, 1982, 82-1 CPD 22, and thus a determination to cancel a solicitation after bid opening is not legally objectionable unless clearly there is no reasonable basis for it. Central Mechanical, Inc., B-206030, February 4, 1982, 82-1 CPD 91.

Where estimates in a solicitation are found to be other than a reasonably accurate representation of actual anticipated requirements, cancellation is required to preclude the possibility of an award that will not result in the lowest cost to the Government and to provide bidders an opportunity to structure their bids on a more realistic representation of anticipated needs. Edward B. Friel, Inc., 55 Comp. Gen. 231 (1975), 75-2 CPD 164. For example, where the estimated quantities in the solicitation are based upon the incumbent's reports, and an agency audit indicates that those reports are erroneous so that the incumbent could have an unfair competitive advantage, cancellation and resolicitation is appropriate. Downtown Copy Center, B-206999.6, December 6, 1982, 62 Comp. Gen. ____, 82-2 CPD 503. Moreover, cancellation is appropriate whenever it appears that for some reason fair and equal competition or competition on an equal basis might have been thwarted. Downtown Copy Center, supra.

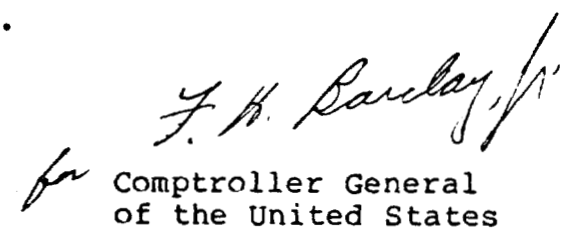
In this case, we believe that the Army had a reasonable basis for canceling the solicitation. As indicated in the Army's report, because of an error in calculation, the estimated quantity for item 2.40 was significantly out of line with the Army's actual projections. Moreover, it appears that both Arctic and the incumbent, Karnavas, had reason to suspect the error and unbalanced their bids on that basis, to the extent that they were markedly below the cost of just the materials needed for item 2.40, while the other bidders' prices were up to 20 times higher. Consequently, we believe that the other bidders who were unaware of or did not suspect an error in item 2.40 were at a competitive disadvantage. Further, given the extreme variance in bid prices for this item and its effect upon total cost to the Government, the Army was unable to determine whether Arctic's low bid would turn out to be least costly for the Government.

As to the assertion that the Army knew of the error in item 2.40 prior to receipt of bids, we do not think that mere discussion of the usage estimates for this and other items with Arctic, and nothing more, amounts to a showing that the Army was aware of the error in question. The Army had reason to believe that its method for calculating the usage estimates, a doubling of the first 6 months' experience under the then-current contract, was sound. Consequently, the Army did not have notice of the error until Trataros directly challenged the validity of the estimate for item 2.40, arguing that 20,000 linear feet of countertop would cover all of the kitchens in every housing

unit included under the contract, an unlikely occurrence during just 1 year.

With respect to Arctic's contention that in prior procurements of similar services at Fort Dix, the Army failed to cancel the solicitation when errors in the usage estimates were discovered after bid opening, Arctic has listed instances of alleged improprieties and procedural errors but has not submitted any facts for consideration or evaluation. We agree with the Army's argument that when impropriety or bias is alleged, the protester has the burden of proof and misconduct will not be inferred on the basis of inference or supposition and that Arctic has not satisfied this burden here. See A.R.F. Products, Inc., 56 Comp. Gen. 201 (1976), 76-2 CPD 541. Further, we are not persuaded that the prices the Army is paying Karnavas under the extension of its old contract are necessarily less favorable than what it would receive under Karnavas' new bid prices, since Arctic's examples relate only to those items where Karnavas' bid was markedly lower than the Government estimate and its bid was markedly higher in other instances.

The protest is denied.



for Comptroller General
of the United States