

DECISION

28956
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-213885, B-213885.2 **DATE:** July 27, 1984
B-214208

MATTER OF:

Ace Van & Storage Co.; Windward Moving &
Storage Co.

DIGEST:

1. A defect in the estimated quantity of work is generally sufficient justification for cancellation of a solicitation where there is substantial doubt that award to the lowest bidder will result in the lowest cost to the government.
2. When an agency solicits bids on the basis of estimated quantities, the agency must base its estimates on the best information available. There is no requirement, however, that the estimates be absolutely correct. Rather, the estimated quantities must be reasonably accurate representations of anticipated actual needs. A protester challenging an agency's estimates bears the burden of proving that those estimates are not based on the best information available, otherwise misrepresent the agency's needs, or result from fraud or bad faith.
3. Protest of solicitation cancellation is dismissed where protester subsequently received award for the same requirement under a resolicitation even though the protester's price was lowered.
4. Allegation that solicitation estimate was overstated is denied where protester was not prejudiced by the alleged error.

Three protests have been filed relating to the cancellation of invitation for bids (IFB) No. N00604-84-B-0003 (3) and the resolicitation under IFB No. N00604-84-B-0019 (19) issued by the Naval Supply Center (NSC), Pearl Harbor, for the preparation of household goods for movement

and related services for members of all military services in the state of Hawaii, for calendar year 1984.

IFB No. 3 contained three schedules of work in various geographic zones: schedule I (outbound moves), schedule II (inbound moves), and schedule III (intra-area moves). Bids were to be evaluated on the basis of total aggregate price of all items within an area of performance under a given schedule. The government reserved the right to make an award of two or more areas to a single bidder if such award would result in an overall lower estimated cost to the government. All-or-none bids were permitted. The November 15, 1983, opening showed that Ace Van & Storage Co. (Ace) submitted alternate all-or-none bids: (1) schedules I and II and (2) schedules I, II, and III. Ace's all-or-none bid for schedules I and II was low. Windward Moving & Storage Co. (Windward) was the low bidder for schedule III. The Bekins Moving & Storage (Bekins) all-or-none bid for schedules I and II was second low. Besides Ace, one other bidder, Worldwide Moving & Storage, Inc. (Worldwide), submitted an all-or-none bid for schedules I, II, and III.

On November 21, 1983, the Director, Joint Personal Property Shipping Office, Hawaii, (Director) advised the contracting officer that he was developing new estimates for the estimated volume quantities contained in IFB No. 3. The Director had noticed the wide price disparity on schedule II, item 23, between Ace (\$20 per gross hundred weight (GCWT)) and Bekins (\$3 per GCWT), and that the 1983 contract price (with Ace) of \$15.50 per GCWT was between four and five times the worldwide average for such services. The Director suspected that Ace's \$20 bid reflected the incumbent's knowledge of an inaccurate government estimate.

The methodology for developing the estimated quantity for schedule II, item 23, was reviewed and the Director found that the estimate of 30,000 GCWT was about 40 percent smaller than it should have been, based upon a 3 year historical average. Because of this discrepancy the Director reviewed the estimation methodology for the other items in the solicitation and found erroneous estimates for schedule I, items 4b(1) and 9a, and schedule II, item 22.

By letter dated December 9, 1983, the contracting officer advised all those on the bidders' mailing list that

IFB No. 3 was cancelled because the government's estimated quantities were inaccurate. The contracting officer determined that notwithstanding the fact that the faulty estimates were found only in schedules I and II (and not schedule III), a total rather than partial cancellation was in the best interest of the government and least prejudicial to bidders because two bidders (Ace and Worldwide) had bid all-or-none for schedules I, II, and III. IFB No. 19, the resolicitation, was issued December 15, 1983. The estimated requirements for items 29 and 30 of schedule III were reduced from 100,000 and 10 GCWT to 86,000 and 8.6 GCWT, respectively, to reflect the somewhat shorter period of performance.

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Ace protests the cancellation of IFB No. 3 and the failure to award to it based on its schedules I and II all-or-none bid. Ace contends that no compelling reasons existed to cancel solicitation No. 3 based upon revised estimates because: (1) no new information was available after bid opening that was not available to calculate the estimate before bid opening, (2) the government has offered inadequate rationale for its proposed revised estimates of two line items, numbers 4(b)(1) and 23 which represent the largest changes in the estimates, and (3) the combined changes due to the proposed revisions of items 4(b)(1) and 23 would create only a net increase of 4,000 GCWT--only 2 percent of the total contract--an insignificant amount.

We deny the protest.

Generally, a solicitation may be cancelled after bid opening only if there is a compelling reason to do so, such reason as inadequate or ambiguous specifications. Edward B. Friel, Inc., et al., 55 Comp. Gen. 488(1975), 75-2 C.P.D. ¶ 333. Defense Acquisition Regulation (DAR) § 2-404.1(b)(1), reprinted in 32 C.F.R. pts. 1-39 (1983). A defect in the estimated quantity of work is generally sufficient justification for cancelling. Heuer, Inc., B-202017.2, Dec. 11, 1981, 81-2 C.P.D. ¶ 460. This is because there are not actual requirements on which to evaluate bids, so the only estimated requirements reflect the agency's best judgment as to what may transpire in the future and what ultimate costs the government may incur.

Thus, the estimated quantities directly control bid prices and bid evaluation. See Heuer, Inc., supra.

Where there is a wide variation between the IFB estimates and the actual anticipated requirements, there is substantial doubt that award to any bidder will result in the lowest cost to the government. See Heuer, Inc., supra. Additionally, award to the apparent low bidder determined by using actual estimates disregarding a solicitation's estimates is not fair because bidders might have changed pricing strategies based on different estimates and may have offered different bid prices. Also, nonbidders may have bid based on different requirements.

Ace's first argument is that no new information was available after bid opening than was available before bid opening. While the raw data on which the estimates were based were in existence prior to bid opening, it is clear from the agency report that it was not until after bid opening that the contracting officer was made aware by the Director that mistakes had been made in the calculation of the estimates. In any event, we have held that an agency may cancel a solicitation no matter when the information precipitating cancellation first surfaces. Chrysler Corporation, B-206943, Sept. 24, 1982, 82-2 C.P.D. ¶ 271; Marmac Industries, Inc., B-203377.5, Jan. 8, 1982, 82-1 C.P.D. ¶ 22.

Ace's second contention is that the government has offered inadequate rationale for its revised estimates of two line items (numbers 4(b)(1) and 23) under IFB No. 19. We disagree.

The revision of the 4(b)(1) estimate was based upon the reasonable belief that at some time midway through the contracting period the NSC would implement "Code J" procedures leaving little remaining work for the awardee under item 4(b)(1) of this IFB. "Code J" procedures involve the utilization of a different contracting method to take advantage of economies resulting from the use of one contractor from origin to destination. See paragraph 2001am(2)(i), C. 22, of Department of Defense Regulation 4500.34-R. In contrast, the services procured under the IFB involve only packing and drayage at the origin point. Accordingly, the contracting activity determined that the original estimate, which did not take into account the potential for implementation of "Code J" procedures, should have been halved from 40,000

GCWT to an annual estimated requirement of 20,000 GCWT. Since if "Code J" was cost competitive almost all 4(b)(1) requirements could be eliminated and if it was not cost competitive the original estimate of 40,000 GCWT could be accurate, the contracting activity reasonably determined that an estimated one-half of the 4(b)(1) requirements over the year could be eliminated, by implementing "Code J" procedures. Ace originally alleged that it learned that "Code J" provisions had been tabled indefinitely. Ace, however, in letters to our Office dated February 14 and 16, 1984, reversed its position in this regard on the basis of its belief that "Code J" provisions were in fact being implemented, and that the government's needs under item 4(b)(1) would surely be no greater than that in the revised estimate. "Code J" procedures were in fact implemented in February 1984.

The revision of the estimate for item 23 under the resolicitation was reasonably based. NSC calculated the figure by multiplying the monthly average (from 3 years of historical data) of inbound shipments by the calculated average amount of months each shipment is likely to be in storage. Since the method of calculating the revised estimate is documented in the agency report and appears reasonable, we cannot agree with Ace's contention that the "government has offered no rationale at all for its proposed revised estimate." In this regard, Ace has not met its burden of affirmatively proving its case. See Robert E. Derecktor of Rhode Island, Inc.; Boston Shipyard Corp., B-211922, B-211922.2, Feb. 2, 1984, 84-1 C.P.D. ¶ 140.

Ace's final argument is that the combined changes due to the proposed revisions of items 4(b)(1) and 23 would create a net increase of only 4,000 GCWT--only 2 percent of the total contract--an amount so insignificant that cancellation of the IFB would not be warranted. We find Ace's analysis to be faulty. While Ace is correct in stating that these changes create a net increase of only 4,000 GCWT, Ace appears to be ignoring the fact that the bids were priced and the contractor will be paid on a line item basis. Under these circumstances, it is clear that the changes in the estimates are significant in that an award based on the old estimates would be likely to create a contract which would not be of the lowest cost to the government. See Heuer, Inc., supra.

We conclude that the cancellation of IFB No. 3 was based on compelling reasons and was therefore proper.

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Windward protests the cancellation of IFB No. 3, schedule III. Windward argues that although errors in the estimates of schedules I and II were found which may have warranted cancellation of those sections of the IFB, no errors were found pertaining to schedule III and, therefore, it was improper to cancel the schedule III section of the solicitation.

We dismiss the protest.

NSC argues that Windward's protest should be dismissed since Windward was awarded a contract under the resolicitation. We agree. In Fordice Construction Company, B-193719, Nov. 9, 1979, 79-2 C.P.D. ¶ 346; affirmed, B-193719, Jan. 17, 1980, 80-1 C.P.D. ¶ 52, we held that a protest of the cancellation of an IFB on the basis of price unreasonableness was academic when the protester subsequently accepted a negotiated contract for the protested requirement at a lower price which "it agreed was fair and reasonable." In this case Windward did not state that its bid price on the resolicitation was fair and reasonable, but we think the same inference may be made from the fact that Windward accepted a contract to perform schedule III at the price that it bid. Therefore, its protest of the cancellation of that schedule under the prior solicitation will not be considered.

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Ace protests against the estimated quantities used in the resolicitation, IFB No. 19, and argues that a third solicitation for the requirements should be issued.

The protest is denied.

Ace argues that because "Code J" procedures were implemented on February 14, 1984, prior to the award under IFB No. 19, the 17,200 GCWT (1,720,000 pounds) estimate for

schedule I, item 4(b)(1), in the resolicitation is grossly overstated, and should be adjusted downward to some very low number, pointing out the Navy suggests 5 percent of total historic volume, or approximately 170,000 pounds, is reflective of the amount of service which will be ordered under the item 4 during the remainder of 1984.

Ace quotes a section of the agency's February 3 transmittal memorandum attached to its report on Ace's protest against the cancellation of IFB No. 3:

"As to line item 4(b)(1), the issue involves the proper method of estimating a requirement which may cease to exist during the period of performance. Ace argues that the Government should assume a full year's contract requirement because the plan to perform the services in-house (i.e., using Code J procedures) has been 'tabled indefinitely.' Ace's description is inapt. In fact, the Government intends to implement Code J procedures once a cost comparison study verifying the benefit is completed. The Contracting Activity made the judgment that completion of the cost comparison study would permit Code J implementation in six months, after which the need for contractor services would be minimal. Accordingly, the Contracting Activity determined that the original estimate should have been halved. Such a judgment is a reasonable exercise of discretionary authority well within the bounds commonly accorded the Contracting Officer in such instances, McGregor Printing Corporation, B-207084, B-207377, September 20, 1982, 82-2 CPD 240."

Ace argues that since "Code J" procedures are being implemented currently without a 6-month delay, the need for contractor services under item 4(b)(1) should be minimized immediately; therefore, the need for 4(b)(1) services should have been substantially less than estimated in IFB No. 19.

NSC comments that the above quoted statement was incorrect and was the result of a misunderstanding by the agency of certain statements contained in the Director's

affidavit relating to his reasons for changing the estimates.

NSC states that it did consider Ace's concern regarding the potential effect of "Code J" bookings. Since, however, the "Code J" rates were to change on April 1, 1984, and again in October 1984, which could mean that at those times 4(b)(1) prices would become cost effective requiring performance under 4(b)(1), the contracting activity determined that the estimate of 17,200 GCWT was still reasonable.

The record indicates, in addition, that the agency did misinterpret the Director's affidavit. The Director did not indicate that "Code J" was expected to be implemented in 6 months, but rather stated that "it would be reasonable to assume that approximately half of the outbound unaccompanied baggage would be sent via 'Code J.'"

When an agency solicits bids for a requirements contract on the basis of estimated quantities, the agency must base its estimates on the best information available. There is no requirement, however, that the estimates be absolutely correct. Rather, the estimated quantities must be reasonably accurate representations of anticipated actual needs. Space Services International Corporation, B-207888.4 et al., Dec. 13, 1982, 82-2 C.P.D. ¶ 525. The mere presence of a risk factor in government estimates does not render the estimates inaccurate, since there is no requirement that competitive bidding be based on specifications stated so precisely that they eliminate the possibility that the successful contractor will encounter unforeseen conditions or be required to perform slightly more or less work than specified. Hero, Inc., 63 Comp. Gen. 117, (1983), 83-2 C.P.D. ¶ 687; 41 Comp. Gen. 484 (1962).

A protester challenging an agency's estimates bears the burden of proving that those estimates are not based on the best information available, otherwise misrepresent the agency's needs, or result from fraud or bad faith. JETS Services, Inc., B-190855, Mar. 31, 1978, 78-1 C.P.D. ¶ 259. We believe that Ace has not responded to the possibility that after April or October 1984, "Code J" procedures may no longer be cost effective. Ace has not shown that the 4(b)(1) estimate was not based on the best information

available or resulted from bad faith or fraud. We conclude that Ace has not met its burden of proving that NSC erred in using its estimate of its 4(b)(1) requirements. See JETS Services, Inc., id.

In a letter to our Office dated February 22, 1984, Ace alleges that the estimate of 860 pounds for item 30 is "seriously in error," based on "its own records regarding storage incident to local moves provided under similar contracts in other areas." Ace contends that "the estimate of a mere 860 pounds was off by a factor of between one [hundred] and two hundred."

The agency report states, however, that based upon a 3-month sample, item 30 was a rarely used service and that the estimate of 860 pounds was reasonable. In fact, Ace's FOIA request for 1983 actuals for item 30 reflected that in 1983 the actual amount of local storage was zero. We conclude that Ace has not shown the agency's estimate of 860 pounds for item 30 to be unreasonable, based on other than the best information available, or a result of fraud or bad faith. See JETS Services, Inc., id.

In a letter dated March 12, 1984, and filed with GAO March 14, Ace asserts that it recently had discovered that "Code J" procedures impacts not only on item 4(b)(1) but also on line item 5. Ace alleges that the estimate for line item 5, which Ace states "was never changed to reflect implementation of Code J", is in error by 90 percent. The merits of this allegation were not addressed in the agency report. We nonetheless find that Ace would not be prejudiced by the alleged estimate error. The item 5 estimate was for only 2,150 GCWT - a very small percent of the overall contract requirement under schedule I. More importantly, Ace's price for item 5 (\$9.50 per GCWT) was substantially less than the awardee's price (\$30.00 per GCWT). Thus, a reduction in the estimate as urged by Ace would increase, not decrease the awardee's price advantage.

Conclusion

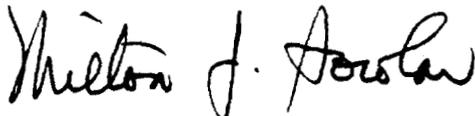
Ace's protest of the cancellation of schedules I and II of IFB No. 3, B-213885, is denied. Windward's protest of the cancellation of schedule III of IFB No. 3, B-213885.2,

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is dismissed. Ace's protest of the estimates found in the resolicitation, IFB No. 19, B-214208, is denied.

for 
Comptroller General
of the United States