



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Harrison Western Corporation
File: B-225581
Date: May 1, 1987

DIGEST

1. Agency properly cancels solicitation after bid opening on the basis of price unreasonableness where the low responsive bid exceeds the government estimate by more than 50 percent and the protester fails to substantiate its allegation that the government estimate is unreasonably low.
2. General Accounting Office denies a protest alleging that an agency's decision to cancel all bids for price unreasonableness stemmed from the agency's desire to favor one particular firm where the protester fails to present any evidence demonstrating bias other than the fact that the decision to cancel was made after the apparent low bidder withdrew due to a mistake in bid.

DECISION

Harrison Western Corporation protests the Bureau of Reclamation, Department of the Interior's, rejection of all bids received under invitation for bids (IFB) No. 6-SI-60-02310, and the resolicitation of the requirement under revised specifications. The Bureau states that this decision was based on the determination that all otherwise acceptable bids were unreasonable as to price. Harrison disputes this finding and implies that the actual motivation for this decision was suspect. We deny the protest.

BACKGROUND

The Bureau of Reclamation issued the solicitation on September 19, 1986 for modifications to the Shoshone Canyon Conduit, part of the Pick-Sloan Missouri Basin Program, in Wyoming. The project generally entails construction of a cast-in-place, reinforced concrete energy dissipation structure and retaining wall, as well as road work, tunnel work, gate chamber modifications, and adit construction. The

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solicitation contained a detailed statement of work and a bidding schedule listing 174 separate line items. A single contract was to be awarded to the firm bidding the lowest price for the entire project. The solicitation further stated that the estimated cost range of the project was between \$10 and \$25 million.

Five firms submitted bids by the October 30 closing date. These bids and the in-house engineer's estimate for the project were as follows:

Engineer's Estimate	\$ 9,550,389
Avery Structures, Inc.	10,589,453
Harrison Western Corp.	15,104,937
Constructors-Pamco and Traylor Brothers, Inc., a Joint Venture	15,665,860
Frontier-Kemper Constructors, Inc.	15,872,731
Fairfield Constructors, Inc.	16,619,505

Avery, after establishing by clear and convincing evidence that it had made a mistake in its bid (but not its intended bid price), was permitted to withdraw in accord with the procedure set forth in the Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.406-3(c) (1986). On December 5, 1986, the contracting officer advised the other bidders that each of their bids had been rejected based upon a determination of price unreasonableness. The Bureau then canceled the IFB and, on December 8, resolicited under amended specifications. Bid opening has been postponed indefinitely pending the resolution of this protest.

DISCUSSION

Harrison's primary basis of protest is that the agency lacked a cogent and compelling reason to cancel the solicitation, as required by applicable regulations. The protester recognizes that in appropriate circumstances, agencies are permitted to reject all bids for price unreasonableness, based on a comparison of the bids received with an independent government cost estimate. Such a determination, the protester continues, is unreasonable where the agency fails to consider all factors indicating that the government estimate is of questionable accuracy. The protester maintains that the burden of proof that all such factors were considered lies with the agency. In this case, the protester alleges, the agency simply concluded, without substantiation, and contrary to the price range stated in the IFB, that the government estimate was reasonable. This lack of supporting documentation, Harrison concludes, mandates that our Office

find that the Bureau acted arbitrarily and capriciously in rejecting all bids for price unreasonableness. The firm seeks an award to itself under the original IFB.

Additionally, Harrison argues that the record reflects that the government estimate was unreasonable. According to the protester, underground construction is very complex and expensive to bid, and to approximate a project's cost requires an intensive, lengthy analytical process. The protester thus concludes that the four bids, ranging in price from \$15.1 to \$16.6 million, submitted by the remaining experienced bidders indicate the current market value of this project. Two of the other rejected bidders, Frontier and Fairfield, have submitted comments to our Office, concurring with this conclusion.

As pointed out by Harrison, the general rule is that an IFB may be canceled after bid opening only when there is a cogent and compelling reason to do so. The FAR specifically permits such action where all otherwise acceptable bids received are at unreasonable prices. 48 C.F.R. § 14.404(c)(6); Airborne Services, Inc., B-221894 et al., June 4, 1986, 86-1 CPD ¶ 523. Our Office has stated that a determination concerning price reasonableness is a matter of administrative discretion that we will not question unless the determination is unreasonable or the protester demonstrates fraud or bad faith on the agency's part. See Freund Precision, Inc., B-199364, et al., Oct. 20, 1980, 80-2 CPD ¶ 300. The agency may base its determination concerning price reasonableness upon a comparison with such factors as government estimates. Omega Container, Inc., B-206858.2, Nov. 26, 1982, 82-2 CPD ¶ 475.

In this instance, the contracting officer made his determination solely on the basis of a comparison of the submitted bids with the government estimate. (The agency states that, contrary to the protester's allegation, there was no determination that bid prices exceeded available funds.) In any event, Harrison's low bid exceeded the estimate by more than 50 percent. We believe that this provides a reasonable basis for the decision to cancel and resolicit. See Hoboken Shipyards, Inc., B-223581, et al., Sept. 19, 1986, 86-2 CPD ¶ 324. Previously, we have found cancellation to be justified where the low responsible bid exceeded the government estimate by as little as 7.2 percent. Building Maintenance Specialists, Inc., B-186441, Sept. 10, 1976, 76-2 CPD ¶ 233.

While Harrison argues that the government estimate provides an invalid comparison, it has provided little substantiation for its allegation that it was unreasonably low. Beyond general assertions that the work is complex and that the bids submitted by highly experienced contractors must reflect current market conditions, Harrison merely speculates that the Davis-Bacon minimum wage rates utilized in preparation of the government estimate were unrealistically low, since experienced miners must be paid more than the minimum. The protester asserts that use of minimum wage rates resulted in the estimate being low by approximately \$300,000. We find this insufficient to disturb the agency's conclusion that all bids were unreasonable as to price. See Spruill Realty/Construction Co., B-209148.2, Jan. 31, 1983, 83-1 CPD ¶ 102. Considering the discrepancy between the government estimate and the low acceptable bid, it is extremely doubtful that an increase of \$300,000 in the estimate would have changed the contracting officer's determination.

Furthermore, we are not persuaded by Harrison's contention that it was unable to submit additional evidence in view of the Bureau's refusal, in response to a Freedom of Information Act request, to release supporting documentation for the in-house estimate. While access to the government's worksheets -- may have been beneficial, Harrison nevertheless could have identified those of the 174 separate line items for which it believed that the government estimate was unreasonably low. Harrison, however, did not submit any such evidence. The Bureau, at our request, furnished our Office with copies of the backup material for the in-house estimate, and our in camera examination of this material does not establish that the estimate was unreasonable.

Finally, when comparing the government estimate to the remaining bids on an item-by-item-basis, we find a wide discrepancy among bids for particular items, so that the low composite bid exceeded the estimate by significantly less than the protester's low individual bid. While this method of comparison by itself does not conclusively demonstrate the reasonableness of the government estimate, it provides additional support for our declining to object to the contracting officer's determination. Accordingly, we deny this basis of protest.

Harrison also questions the Bureau's motivation for rejecting all bids. The protester states that the agency's decision to reject all bids was only made after Avery was unable to prove its intended bid price. This sequence of events, the protester continues, suggests that the Bureau intended to

favor Avery at the expense of Harrison and the other bidders whose bid prices have been exposed. The record, however, contains no evidence of bias, and it indicates that the Bureau also found Avery's claimed intended bid price unreasonable. Moreover, the resolicitation contains an estimated price range of only \$5 to \$10 million. We therefore reject Harrison's allegation of bias as mere speculation. See Lithographic Publications, Inc., B-217263, Mar. 27, 1985, 85-1 CPD ¶ 357.

The protest is denied.

Harry R. Van Cleve

Harry R. Van Cleve
General Counsel