



The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: Nootka Environmental Systems, Inc.

File: B-229837

Date: April 25, 1988

## DIGEST

Cancellation, after bid opening, of solicitation for cleanup of contaminated materials was not unreasonable where solicitation was so generally worded as to prompt inquiries from bidders as to the permissible method of disposal; apparently conflicting, and in some cases, erroneous advice was given; there was a wide disparity in bid prices; and even the protester's low bid was 20 percent higher than the government estimate, which has not been shown to be invalid as to the protester's proposed method of disposal.

## DECISION

Nootka Environmental Systems, Inc., protests the cancellation of invitation for bids (IFB) No. SB-87-0031, issued by the Department of the Interior, Bureau of Indian Affairs (BIA). Nootka, the low bidder, seeks award under the solicitation or, alternatively, the costs of preparing its bid and of pursuing the protest, inclusive of attorneys' fees.

We deny the protest.

The IFB called for the cleanup at two sites in Arizona of 3,600 square feet of polychlorinated biphenyl (PCB)-contaminated storage and equipment areas, a number of PCB soil tests, and the extraction, loading, removal and disposal of six 55-gallon barrels of PCB-contaminated oil and other material and 3,000 cubic yards of contaminated soil. At the time of bid opening, 19 bids were received, ranging in price from Nootka's low bid of \$438,845 to \$14,157,084. After the BIA determined that all bids were at least 20 percent higher than the government estimate (\$331,755), it canceled the IFB on the basis that "[a]ll bid prices received were excessively higher than the estimated amount to complete the services as specified in the statement of work."

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In its response to the protest, the BIA also asserts that it canceled the IFB because it was ambiguous in that it failed to specify the method of disposal.<sup>1/</sup> Noting that some bids were based on disposal by burial while others were based on disposal by incineration, the agency expresses the view that the disparity in bid prices was the result of the IFB's ambiguity as to the disposal method to be used. The contracting officials further state that to make award under the solicitation would be unfair to some bidders because, prior to bid opening, some of the prospective bidders inquired as to the disposal method to be used and were orally advised that the contaminated material was to be incinerated.

The protester maintains the agency had no compelling reason to cancel the IFB. Denying that its bid price was "excessive," Nootka contends that cancellation on the basis that bid prices were higher than the government estimate was unreasonable since, the protester states, the agency has characterized its own estimate as "unreasonable." Nootka, whose bid was based on disposal by burial, also disputes the agency's determination that the IFB was ambiguous as to the method of disposal. It is the protester's position that the IFB properly did not specify the method of disposal to be used and, thus, left that choice to the individual bidders. The protester further states that the IFB would have been overly restrictive if it had specified the disposal method since either burial or incineration will meet the agency's needs, and the question as to which is the less costly method depends upon the amount of contaminated material involved, the distance from the cleanup site to the place of disposal, and the contractor's resources.

Contracting officers have broad discretion in determining when it is appropriate to cancel an IFB. However, the preservation of the integrity of the competitive bidding system requires that the decision to cancel an IFB after bid opening be supported by a cogent and compelling reason. Federal Acquisition Regulation (FAR) § 14.404-1(a)(1); Harrison Western Corp., B-225581, May 1, 1987, 87-1 CPD ¶ 457. A solicitation may be canceled after bid opening if the prices of all otherwise acceptable bids are unreasonable. FAR § 14.404(c)(6); Airborne Services, Inc., B-221894, et al., June 4, 1986, 86-1 CPD ¶ 523.

A determination of price reasonableness is, however, a matter of administrative discretion, and we will not

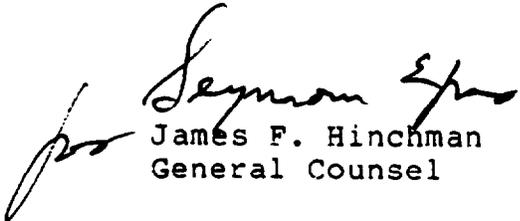
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<sup>1/</sup> The record indicates there are two approved methods of PCB disposal--incineration or burial in a landfill approved by the Environmental Protection Agency.

question that determination unless it is clearly unreasonable or the protester demonstrates fraud or bad faith on the part of the contracting officials. A.T.F. Construction Co., Inc., B-228060, B-228061, Oct. 30, 1987, 87-2 CPD ¶ 436. The agency's determination of price reasonableness may properly be based upon comparison with government estimates and any other relevant factors. Harrison Western Corp., B-225581, supra.

Although Nootka refers to the prices of other bids received (all of which were higher than its own) as evidence that its bid was not unreasonable and that the agency's estimate is below market prices, it fails to clearly establish that its bid was not unreasonably high for disposal by burial. While the protester argues that the agency determined its own estimate was unreasonable, the actual statement in the agency report is that "the engineer's estimate does not seem to be reasonable for the cost of incineration" (emphasis added), the disposal method the BIA says it contemplated under the solicitation. In our judgment, the agency's determination that its estimate was unreasonable for incineration (which the record indicates is generally more expensive than disposal by burial) does not render that estimate invalid with respect to disposal by burial. Nootka's bid was 20 percent higher than the government estimate, and on this record we find that the protester has not demonstrated that the agency's determination regarding its bid was unreasonable.

Here we have, therefore, a procurement in which (1) a solicitation was so generally worded that it prompted inquiries from several bidders as to what method of disposal was intended; (2) conflicting and, in some cases, erroneous advice was given; (3) an extremely wide range of bid prices was received and (4) even the protester's low bid was 20 percent higher than the government estimate. Under these circumstances, we think there is merit to the contract specialist's conclusion that a "fair and equal competition for all bidders" was not conducted. Accordingly, we do not think it unreasonable for the agency to cancel the solicitation for the purpose of re-advertising the work under terms in which the government's requirements are clearly understood by all. The protest is denied.

  
James F. Hinchman  
General Counsel