



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Nationwide Roofing & Sheet Metal Company, Inc.

File: B-231895.2

Date: October 28, 1988

### DIGEST

1. Contracting officer's decision to cancel invitation for bids based on unreasonableness of bid prices was proper where the low acceptable bid substantially exceeded the government estimate and there is no showing that the decision to cancel was based on bad faith or fraud on the part of contracting officials.
2. There is no basis for recovery of bid preparation or protest costs where protest is either denied on the merits or dismissed as academic.

### DECISION

Nationwide Roofing & Sheet Metal Company, Inc. protests the cancellation of invitation for bids (IFB) No. F33601-88-B-9003, issued by the Air Force for roof repair services at Wright Patterson Air Force Base, Ohio. We deny the protest.

Five bids were submitted at bid opening on June 21, 1988. Nationwide, the second low bidder, initially filed a protest with our Office challenging award to the low bidder, Tops Roofing, on the ground that Tops failed to include with its bid a manufacturer's certification required by the IFB. After reviewing the protest, the Air Force concluded that three of the five bids, including Tops', were nonresponsive because they lacked the required certification. The contracting officer then examined the remaining two bids from Nationwide and another firm and determined that they were unreasonably high in comparison to the government estimate. As a result, the contracting officer canceled the IFB and now plans to conduct a new competition for the services. In view of the cancellation, we dismissed Nationwide's initial protest as academic. Nationwide then filed the current protest challenging the cancellation on the ground that its bid is not unreasonably high.

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Under Federal Acquisition Regulation § 14.404-1(c)(6), an IFB may be canceled after bid opening if the prices of all otherwise acceptable bids are unreasonable. The determination that the prices are unreasonable is a matter of administrative discretion which we will not question unless it is clearly unreasonable or there is a showing of fraud or bad faith on the part of the contracting officials. Speer Construction Co., Inc., B-228339.2, Feb. 10, 1988, 88-1 CPD ¶ 131. Such a determination may be based on a comparison of the bid prices with the government estimate, and we have found cancellation to be justified when the low acceptable bid exceeded the estimate by as little as 7.2 percent. See Harrison Western Corp., B-225581, May 1, 1987, 87-1 CPD ¶ 457.

Here, the Air Force calculated the government estimate using the unit costs from the current year's repair program adjusted for inflation. We see no basis to question the reasonableness of the government estimate, nor is there any evidence of fraud or bad faith on the part of the contracting officials. Therefore, since the protester's bid was substantially higher than the government estimate, the contracting officer acted reasonably in rejecting the bid as unreasonably high and in canceling the IFB.<sup>1/</sup> A.T.F. Construction Co., Inc., B-228060, et al., Oct. 30, 1987, 87-2 CPD ¶ 436.

Nationwide also requests recovery of its bid preparation and protest costs. Our authority to allow recovery of such costs is predicated on a determination by our Office that a solicitation, proposed award, or award does not comply with statute or regulation. Competition in Contracting Act of 1984, 31 U.S.C. § 3554(c)(1) (Supp. IV 1986); Bid Protest Regulations, 4 C.F.R. § 21.6(d) (1988). Since we have determined that the cancellation of the IFB was proper and thus that the protest is without merit, Nationwide is not entitled to recover the costs it claims. Similarly, to the extent that Nationwide requests recovery of its costs based on the initial protest challenging the proposed award to Tops, there is no basis for recovery. An essential condition to a declaration that a protester is entitled to award of costs is a decision on the merits of the protest.

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<sup>1/</sup>While the government estimate was disclosed to our Office for in camera review, it was withheld from the protester in view of the Air Force's intention to conduct a new procurement for the services.

Interstate Diesel Service, Inc., B-230153.2, Apr. 14, 1988,  
88-1 CPD ¶ 367. Since, as noted above, Nationwide's initial  
protest was dismissed as academic after the IFB was  
canceled, and, as a result, no decision on the merits was  
issued, there is no basis for award of costs. Interstate  
Diesel Service, Inc., B-229610, et al., Feb. 17, 1988,  
88-1 CPD ¶ 162.

The protest and the claim for costs are denied.

*Ronald Berger*

*JF*

James F. Hinchman  
General Counsel