



The Comptroller General
of the United States

Washington, D.C. 20548

G. L. Hooley

Decision

Matter of: Weststar Inc.
File: B-235652
Date: August 7, 1989

DIGEST

Notwithstanding the validity of the government's estimate for a procurement or the agency determination that all bid prices were excessive, an agency's cancellation of solicitation after bid opening is not legally objectionable where it determined after bid opening that sufficient funds were not available to make award to the low responsive bidder. Under such circumstances, the agency is not required to award a contract for less than the total amount of work solicited.

DECISION

Weststar Inc. protests the cancellation, after opening, of invitation for bids (IFB) No. N62474-87-B-7564, issued by the Department of the Navy for construction of a jet fuel storage and dispensing facility at Castle Air Force Base, California. We deny the protest.

Weststar, the low bidder at the April 25, 1989, bid opening, bid \$11,973,837 on the base bid and \$12,772,123 for the base bid and four additive items. The government estimate for the base bid was \$9,550,000 and \$10,365,000 for the base bid and four additive items. The control amount for the IFB was set at \$9,732,000, which reflected the agency's available funding for the project.

To determine why the bids exceeded the funding allocated for the project by such a large amount the Navy, on April 26, asked the designer of the project, Boyle Engineering Corporation, to perform a bid analysis. Boyle met with Weststar and one of Weststar's subcontractors on May 4 to discuss the difference in price between Weststar's bid and the government's estimate. The Navy also contacted the second through fifth low bidders to obtain an explanation for the wide disparity between the government estimate and their bids.

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By memorandum dated May 4, the Navy project manager requested that the contracting officer cancel the IFB due to the excessive amount of all bids received. The Navy reports that it decided to cancel the IFB before it received a memorandum dated May 10 from Boyle, which described Boyle's meeting with Weststar. By letter dated May 19, the Navy informed Weststar and all other bidders that the solicitation was canceled because all bids substantially exceeded the government estimate. The letter stated that the Navy planned to re-advertise the project at a later date based upon revised specifications. Weststar protested the IFB's cancellation to our Office on May 25.

Weststar contends that its bid was not excessive but rather the government's estimate lacked accurate and current material prices for the mechanical and electrical divisions. According to Weststar, the Navy's decision to cancel the IFB was made prematurely before the Navy had all the facts to determine whether bids were excessive. Weststar requests that it be awarded a contract, since it is prepared to reduce the amount of work and value engineer the project to remain within the government estimate. Weststar also complains about the timing of the cancellation, asserting that had the Navy contacted Weststar with any hint of rebidding the project, Weststar would have refused to disclose any specific material quotations, subcontractor costs, labor productions and scheduling that would have compromised its rebid position.

A contracting agency has a right to cancel a solicitation when sufficient funds are not available, irrespective of disputes concerning the validity of the government estimate or the reasonableness of the low responsive bid price. Grace Indus. Inc., B-228097.2, Mar. 1, 1988, 88-1 CPD ¶ 209. Since Weststar does not dispute the Navy's determination that there is not sufficient funding, we find that the agency properly canceled the IFB and the protester is not entitled to award under it. Kos Kam-Pelasgus, Joint Venture, B-225841, Apr. 1, 1987, 87-1 CPD ¶ 370.

Although Weststar complains about the timing of the cancellation, we have held that information relating to whether there is sufficient reason to cancel a solicitation can be considered no matter when the information which justifies the cancellation first surfaces. See Earthworks of Sumter, Inc., B-232067.2, Jan. 5, 1989, 89-1 CPD ¶ 9. Weststar has not been prejudiced by the disclosure of its bid price at the bid opening because Weststar will have the same opportunity to compete on the resolicitation as other competitors whose prices were also revealed, and to offer whatever price it desires. Id.

Concerning Weststar's request that it be awarded the contract under a scope of work reduced to comport with the amount of funds available, the agency is not required, under these circumstances, to award the contract for less than what was required under the solicitation as issued. Grace Indus. Inc., B-228097.2, supra, 88-1 CPD ¶ 209 at 2.

The protest is denied.

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for James F. Hinchman
General Counsel