



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Hawkins Builders, Inc.
File: B-237680
Date: February 5, 1990

Wayne K. Hawkins, Esq., for the protester.
Lester Edelman, Esq., Department of the Army, for the agency.
John Formica, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Contracting officer's decision to cancel invitation for bids (IFB) based on unreasonableness of bid prices was proper where low bid exceeded the government estimate by 71 percent and there is no showing that the decision to cancel was unreasonable or based on bad faith on the part of contracting officials.
2. Where cancellation of solicitation is in accord with governing legal requirements, the agency does not create an impermissible auction on resolicitation.

DECISION

Hawkins Builders, Inc., protests the cancellation of invitation for bids (IFB) No. DACA63-89-B-0175, issued by the United States Army Corps of Engineers for the repair and upgrade of the hospital fire protection system at Dyess Air Force Base, Texas. Hawkins contends that the Corps improperly canceled the solicitation, and that it should be awarded a contract as the low responsive bidder.

We deny the protest.

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The IFB was issued on August 1, 1989. Two bids were received, and at bid opening on August 31, Hawkins' bid of \$1,681,140 for the basic items, and \$1,762,440 for the basic items plus two options for additional works was low. The government estimate for the project was \$985,109 for the basic items, and \$1,048,802 for the basic items plus options. Because the apparent low bid exceeded the government estimate for the basic items by 71 percent, and exceeded the basic items plus options estimate by 68 percent, the Corps' cost engineering branch was asked to review the government estimate. The Engineering branch concluded that the government estimate was reasonable. Additionally, the Corps found that \$1,013,456 in total funds were available for the project, and therefore concluded that both the low bids for the basic items and for the options exceeded the funds available for the project. The contracting officer subsequently determined that the low bid was unreasonably high and canceled the solicitation. The contracting officer informed Hawkins by letter dated October 20 that the solicitation had been canceled. The record does not indicate that the project has been resolicited.

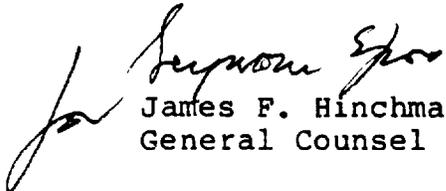
Hawkins argues that its price is fair and reasonable and that the cancellation of the solicitation was therefore improper. In this regard, the protester argues generally that the government estimate is questionable. Hawkins further argues that any resolicitation of the project would constitute "price pedalling" or an auction.

An IFB may be canceled after bid opening if the prices of all otherwise acceptable bids are unreasonable. Federal Acquisition Regulation (FAR) § 14.404-1(c)(6). The determination that prices are unreasonable is a matter of administrative discretion which must be made in good faith and have a reasonable basis. Groathouse Constr., B-235236, et al., July 13, 1989, 89-2 CPD ¶ 44. A determination that the price is unreasonable may be based on a comparison of the bid price with the government estimate. Id. We have found cancellation to be justified where the low responsive bid exceeded the government estimate by less than 10 percent. See Building Maintenance Specialists, Inc., B-186441, Sept. 10, 1976, 76-2 CPD ¶ 233. Since the low bid on the basic items submitted by Hawkins exceeded the government estimate by 68 percent, and there is no evidence showing that the government estimate was unreasonable or that the agency acted in bad faith, we find that the contracting officer here properly determined that the bidders' prices were unreasonable and that cancellation was justified. Groathouse Constr., B-235236, supra.

Moreover, the record shows that Hawkins' low bid exceeded the funds available for the project. 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.

Hawkins further argues that if the agency's cancellation of the original solicitation and the resultant disclosure of its bid price is followed by a resolicitation of the project, those actions by the agency would be tantamount to an improper auction. We disagree. Where, as here, the cancellation after prices are exposed is in accord with the governing legal requirements, the agency does not create an impermissible auction on resolicitation. Metric Constr., Inc., et al., B-229947 et al., Mar. 25, 1988, 88-1 CPD ¶ 311.

The protest is denied.


James F. Hinchman
General Counsel