

J. Vickers



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Currents Construction, Inc.

File: B-236735.2

Date: February 27, 1990

William E. Franczek, Esq., Vandeventer, Black, Meredith & Martin, for the protester.
Sharon K. Matsumura, Esq., and Vasio Gianulias, Esq., Department of the Navy, for the agency.
James Vickers, Esq. and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Information relating to whether there is a sufficient reason to cancel can be considered no matter when the information justifying the cancellation first surfaced or should have been known.
2. Where record shows that agency believed that services could be performed more cheaply in-house and that some of the estimates contained in IFB were inaccurate, General Accounting Office will not object to cancellation even though agency's initial justification for cancellation of invitation for bids was questionable.

DECISION

Currents Construction, Inc., protests the rejection of its bid and the cancellation of invitation for bids (IFB) No. N62470-88-B-2437, issued by the Navy Public Work Center, Norfolk, Virginia, for an indefinite quantity requirements contract for high voltage cable services. Currents' bid, the only one received, was rejected as being unreasonably priced compared to the government's estimate.

The solicitation's bid schedule contained line items for various types of work, such as installing and removing cable and installing conduit. These items were broken into three types of electrical service (35, 15 and 4.16 kilovolt (KV)). Each of these line items contained an estimated quantity, expressed in linear feet (LF). In addition, there were

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seven line items for cable labeled "Stock Items, One-Time Cost." Under these items, the contractor is required to provide the amounts of cable listed, such as 35 KV cable, 750 MCM, 1,500 LF at a fixed price. The government is to pay for these items on a one-time basis and as the material is used, the contractor must replenish the stock of the item to the listed quantity without further payment.

Bid opening was August 22, 1989. Currents' bid was \$901,366. The government's estimate was \$745,090. On September 8, the Navy rejected Currents' bid as excessive as compared to the estimate and canceled the IFB. By letter of September 21, Currents protested the rejection of its bid to the contracting officer. The protest was based primarily on the argument that the agency's estimate was significantly understated because among other things, it failed to take into consideration that cable could only be ordered by minimum quantity and that there had been drastic price increases for copper cable. The agency denied the protest. However, in reviewing the government's estimate in connection with the protest, the agency agreed with Currents that the minimum quantity of 35 KV (750 MCM) cable that could be purchased was 5,000 LF rather than the 1,500 LF quantity listed in the IFB line item 0001DG and revised its estimate to \$783,042.

In its protest to our Office Currents argues that the Navy's estimate was grossly understated for several reasons. First, Currents argues that the estimate is based on less than the minimum available quantities for two line items-- 0001DH and 0001DJ--of the three for 35 KV cable stock and that the Navy improperly based its estimate for all three of these items on the use of 100 percent insulation rather than the 133 percent insulation required by the IFB.^{1/} The protester further argues that the agency did not include profit, overhead or bonding costs in its estimate for the three cable items. Currents also complains that in four of the line items for the installation of cable, the Navy's estimate understated by \$38,400, the price of cable which has increased significantly over the past year because of a shortage of cable and increases in the price of copper. Finally, the protester points out additional underestimates in the amounts of \$6,450, \$3,600 and \$3,750 for a total

^{1/} In response to the agency-level protest, as indicated earlier, the agency adjusted its estimate to compensate for the fact that a minimum of 5,000 LF of cable had to be ordered to fulfill the requirements of line item 0001DG.

alleged underestimate of \$169,986.2/ Thus, it is Currents' view that the Navy's estimate should have been \$915,076 which makes the protester's bid of \$901,366 reasonable and the rejection improper.

In response to the protest, the Navy has conceded that Currents' arguments concerning the \$6,450, \$3,600 and \$3,750 underestimates are correct and it has further adjusted its overall estimate upward to \$796,842. The Navy also admits that Currents was correct in that the cable needed for line items 0001DH and 0001DJ can only be ordered in 5,000 LF quantities as opposed to the 1,500 LF quantities specified in the IFB. The agency does not, however, specify exactly what impact it believes this would have on its estimate although it still maintains that the protester's bid is unreasonably high in comparison to the estimate. In addition, it appears to take the position that Currents' bid was also too high in the abstract and that the requirement can and should be performed in a less costly manner in-house.

Because of the potential adverse impact on the competitive bidding system of cancellation after bid prices have been exposed, a contracting officer must have a compelling reason to cancel an IFB after bid opening. Federal Acquisition Regulation (FAR) § 14.404-1(a)(1). Contracting officials have broad discretion to decide whether or not compelling circumstances for cancellation exist and our Office's review is limited to determining whether the exercise of discretion is reasonable. American Technical Communications, B-230827, July 15, 1988, 88-2 CPD ¶ 56.

Further, the regulations specifically provide that a solicitation may be canceled after bid opening if, as here, only one bid is received and the agency cannot determine that the price is reasonable. FAR § 14.404-1(c)(6). A determination that a bid price is not reasonable involves broad discretion on the part of the contracting officer, and we generally will not disturb it absent a showing of fraud or bad faith. Trebor Indus., Inc., B-228906, Nov. 4, 1987, 87-2 CPD ¶ 446.

It is clear from the record that the agency based its initial decision to reject Currents' bid and cancel the solicitation on its conclusion that Currents' bid price was unreasonably high as compared to the original Navy estimate.

2/ This figure includes \$13,500 which the Navy conceded under line item 0001DG. In our view, this amount should not have been included in the total.

As a result of Currents' agency-level protest and its protest to our Office a number of significant errors in the agency's original estimate have been revealed. While the exact number and the precise impact of these errors is in dispute the one aspect which emerges is that the Navy does not believe that it is reasonable for it to spend over \$900,000 to have Currents perform the cable services. The agency appears to base its conclusion on two main factors. First, it now admits that for at least three of the stock line items, Nos. 0001DG, 0001DH and 0001DJ, the cable can only be obtained in quantities which far exceed the amount specified in the IFB and at a greater cost than estimated. Second, it believes that it can perform the services itself more cheaply using an in-house workforce.

Currents argues that the Navy cannot now advance these grounds to support the cancellation but must rely on the reason stated in September 1989, that Currents' price was not reasonable. Moreover, Currents contends that the failure to specify correct quantities in the solicitation is not a proper justification for cancellation and argues that the agency may not perform the services in-house without conducting a cost comparison under Office of Management and Budget Circular A-76. We disagree and conclude for the reasons cited below that while the agency's initial basis for the cancellation was questionable, the reasons which developed later provide a sufficient basis upon which to support the cancellation.

First, we have held that information relating to whether there is a sufficient reason to cancel an IFB can be considered no matter when the information justifying the cancellation first surfaced or should have been known. Independent Gas Producers Corp., B-229487, Mar. 2, 1988, 88-1 CPD ¶ 217. Thus, we think that the later developed reasons for the cancellation may be considered.

As far as the specific grounds for the cancellation are concerned, we have stated that where estimates in a solicitation are found to be other than a reasonably accurate representation of actual anticipated requirements, a compelling reason for cancellation exists, so as to preclude the possibility of an award that will not result in the lowest cost to the government. American Technical Communications, B-230827, July 15, 1988, 88-2 CPD ¶ 56.

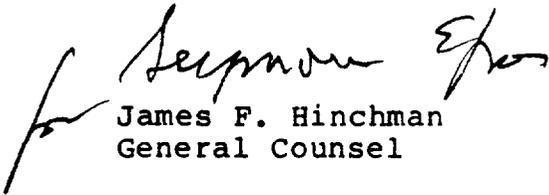
Here, the record shows that the Navy, was unaware of the minimum order requirements for 35 KV cable when the solicitation was issued. Because of the requirement to pay for 5,000 LF of cable for the three stock items where the IFB called for only 1,500 LF, the government's cost would be

\$117,000 higher than its actual needs. This provides a proper ground for cancellation. Further, we also believe that the Navy could properly have canceled the solicitation based on its conclusion that it could more cheaply perform the services in-house. Creative Resources, Inc., B-225950, Feb. 11, 1987, 87-1 CPD ¶ 153. Contrary to the protester's position, such a decision to perform services in-house need not be based upon the results of an A-76 cost comparison. H. David Feltoon, B-232418, June 5, 1989, 89-1 CPD ¶ 10.

Finally, the protester argues that the Navy acted in bad faith as the record shows that the solicitation was actually canceled because the agency wished to perform the work in-house rather than because the protester's bid was too high.

While the record does include two memoranda, one of which was written immediately prior to the cancellation, which state that the work would be better performed in-house this does not show that the agency acted in bad faith. Both memoranda were written well after the solicitation was issued and the original estimate--which was far below Currents' bid price--was prepared so there is no indication that the solicitation was issued in spite of plans to perform the work in-house. It appears that based on the amount of Currents' bid some agency personnel concluded that the work could be performed more cheaply in-house. While it is indeed unfortunate that the agency's estimate was inaccurate and that the solicitation contained poorly conceived line items for stock cable nevertheless these errors do not constitute bad faith. See American Management Co.--Request for Recon., B-228280.2, Mar. 7, 1988, 88-1 CPD ¶ 242; Computer Resource Technology Corp., B-218292.2, July 2, 1985, 85-2 CPD ¶ 14.

We think that for the reasons cited above the record supports the cancellation and we therefore deny the protest.


James F. Hinchman
General Counsel