



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

Matter of: Applied Construction Technology
File: B-249565.2
Date: February 18, 1993

Benjamin N. Thompson, Esq., for the protester.
Marilyn Johnson, Esq., and Paul M. Fisher, Esq., Department
of the Navy, for the agency.
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General Counsel, GAO participated in the preparation of the
decision.

DIGEST

Agency properly canceled a solicitation designated as a disadvantaged small business set-aside where the sole remaining bid substantially exceeded the prior contract price without a significant change in scope of work and where, although the bid did not exceed the agency price estimate by more than 10 percent, the agency price estimate was determined to be excessive.

DECISION

Applied Construction Technology (Applied) protests the Department of the Navy's cancellation of invitation for bids (IFB) No. N62467-92-B-4912, for base housing maintenance at the Marine Corps Logistics Base in Albany, Georgia. Applied argues that the Navy improperly determined that its bid was not reasonably priced and that, therefore, the solicitation should not have been canceled.

We deny the protest.

The IFB was issued June 19, 1992, and was subsequently amended to designate the procurement as a small disadvantaged business (SDB) set-aside. Only two bids were received--one for \$645,537.33 and one for \$978,172.00 from Applied. Subsequently, the low bidder requested and received permission to withdraw its bid based upon a mistake in its spreadsheet program. Applied, as the only remaining company to have bid on the IFB, became the low bidder.

The Navy notified Applied by letter dated September 10, 1992, that it had canceled the solicitation due to an insufficient number of bids received, and would resolicit the procurement on an unrestricted basis. On September 22, 1992, Applied protested to the Navy. The Navy informed Applied by letter dated September 24 that it was revising the wording of its September 10 letter to reflect that the solicitation was canceled because, after the low bidder had been allowed to withdraw its bid, the remaining bid, from Applied, was determined to be unreasonable as to price.

In fact, the record shows that Navy canceled the solicitation because of its uncertainty as to the reasonableness of Applied's bid price. In his Determination and Findings dated September 10, the contracting officer stated that he could not determine with any degree of certainty that Applied's bid represented fair market value. He questioned the reliability of the Navy's own price estimate of \$893,185, in that it was nearly \$100,000 higher than the expiring contract price of \$502,927, although the scope of work remained substantially unchanged. While the Navy could have been more precise in explaining to Applied why it canceled the solicitation, it is clear that Applied ultimately understood the basis for the agency's action.

Applied argues that the Navy estimate is correct and that the contracting officer's reasons for not relying on the estimate are inadequately supported. Since its bid was only 9.5 percent over Navy's price estimate, Applied contends that Navy acted improperly in finding Applied's bid unreasonable as to price and in withdrawing the SDB set-aside determination.

Department of Defense Federal Acquisition Regulation Supplement (DFARS) § 219.506(a) provides that a SDB set-aside determination "will not be withdrawn for reasons of price reasonableness unless the low responsive offer exceeds the fair market price by more than 10 percent." In addition, Federal Acquisition Regulation (FAR) § 14.404-1(c)(6) provides that an IFB may be canceled after bid opening when only one bid is received and the contracting officer cannot determine the reasonableness of the bid price.

We do not believe that the contracting officer was required to make award to Applied under these facts. Where the evidence casts doubt on the accuracy of the government's estimate, a contracting officer may properly base his or her determination of price reasonableness on other factors, such as past procurement history, current market conditions, or any other relevant factor. FAR §§ 14.407-2, 15.805-2; Sigma West Corporation, B-247916, July 20, 1992, 92-2 CPD ¶ 31. In sum, the contracting officer is responsible for using

"whatever price analysis techniques will ensure a fair and reasonable price." DFARS § 15.805-2.

In this case, in view of the large discrepancy between the expiring contract price and the in-house estimate, the contracting officer questioned whether the in-house estimate was accurate. He was advised by his "Public Works Branch" that the estimate was excessive for several reasons. For example, the estimate failed to make a downward adjustment in the indefinite quantity (IQ) portion of the contract based on the city cost index. The city cost index compares the costs of various types of work to the national average. The Public Works Branch advised that application of the city cost index would have required adjusting for the fact that the South Georgia area is rated at 83 percent of the national average. The protester has not refuted this analysis.

Making this adjustment in the IQ portion of Navy's cost estimate (\$440,945) would have reduced Navy's cost estimate by \$74,961--to a total of \$818,224. It would appear, therefore, that the procurement's fair market price would not be greater than \$818,224. Applied's bid, however, exceeds this amount by approximately 19.5 percent--well in excess of the 10 percent differential required by DFARS § 219.506(a) for withdrawal of a SDB set-aside determination for reasons of price reasonableness.

Thus, while the protester argues that the Navy should have found that Applied's bid was reasonable based on the Navy's in-house estimate, the record supports the Navy's view that it could not rely on the accuracy of that estimate. Under the circumstances, we believe that the contracting officer properly canceled the solicitation.

The protest is denied.


James F. Hinchman
General Counsel