



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

105738

Decision

Matter of: J. Morris & Associates, Inc.
File: B-256840
Date: July 27, 1994

Lynn G. Morris for the protester.
Lester Edelman, Esq., and Danielle M. Conway, Esq.,
Department of the Army, for the agency.
Christine F. Davis, Esq., and Guy R. Pietrovito, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Agency properly canceled a solicitation after bid opening and converted the procurement from sealed bid to negotiated procedures, based upon the unreasonableness of the bid prices, where the low bid exceeded the government estimate by 23 percent and there is no showing that the government estimate was in error or that the decision to cancel was made in bad faith.

DECISION

J. Morris & Associates, Inc. protests the cancellation of invitation for bids (IFB) No. DACA56-94-B-0018, issued by the U.S. Army Corps of Engineers, for the construction of a remote fire station at Altus Air Force Base, Oklahoma.

We deny the protest.

On January 4, 1994, the Army issued the IFB as a small disadvantaged business set-aside for the award of a firm, fixed-price contract. The government estimate for the contract work was \$753,277; funding in the amount of \$780,000 was available for the contract.

The Army received six bids, ranging from J. Morris's low bid of \$1,052,786 to the high bid of \$1,211,000. Each bid exceeded the funding limitation for the procurement and the government estimate, which was reexamined after bid opening and revised to \$855,346. Based upon a comparison with the revised government estimate, the agency concluded that all the bids were unreasonably priced. Accordingly, the Army decided to reject all bids, cancel the IFB, and convert the

procurement to negotiation pursuant to Federal Acquisition Regulation (FAR) § 14.404-1(e)(1).

J. Morris protests that the contracting officer improperly concluded that the bid prices received were unreasonable and therefore lacked a compelling reason to cancel the IFB after bid opening, as required by FAR § 14.404-1(a)(1). The protester generally argues that since there was adequate price competition the government should disregard its estimate.

An IFB may be canceled after bid opening if the prices of all otherwise acceptable bids are unreasonable. FAR § 14.404-1(c)(6). The determination that prices are unreasonable is a matter of administrative discretion, which we will not disturb unless the determination is unsupported or there is a showing of fraud or bad faith on the part of contracting officials. G. Marine Diesel Corp., B-238703; B-238704, May 31, 1990, 90-1 CPD ¶ 515. A determination that a price is unreasonable may be based upon a comparison with the government estimate. Hawkins Builders, Inc., B-237680, Feb. 5, 1990, 90-1 CPD ¶ 154. In this regard, we have found cancellation to be justified where the low responsive bid exceeded the government estimate by 10 percent. See Metric Constructors, Inc.; H.B. Zachry Co., B-229947; B-229947.2, Mar. 25, 1988, 88-1 CPD ¶ 311. Since the low bid submitted by J. Morris exceeded the revised government estimate by 23 percent, and there is no evidence showing that the government estimate is unreasonable (other than the bids) or that the agency acted in bad faith, we find that the contracting officer properly determined that the bidders' prices were unreasonable and that cancellation was justified. Hawkins Builders, Inc., supra.

J. Morris also challenges the agency's determination to complete the acquisition through negotiation, arguing that this was nothing more than an auction. We disagree. Where, as here, the cancellation after prices have been exposed

¹We also note that the bid prices exceeded the Army's funding limitation for this procurement, and that a contracting agency has the right to cancel a solicitation when sufficient funds are not available, irrespective of any disputes concerning the validity of the government estimate or the reasonableness of the low responsive bid price. See Armed Forces Sports Officials, Inc., B-251409, Mar. 23, 1993, 93-1 CPD ¶ 261, recon. denied, B-251409.2, May 24, 1993, 93-1 CPD ¶ 402.

comports with governing legal requirements, the agency does not create an impermissible auction on resolicitation. Metric Constr., Inc.; H.B. Zachry Co., supra.

The protest is denied.

/s/ James A. Spangenberg
for Robert P. Murphy
Acting General Counsel