



**Comptroller General  
of the United States**

Washington, D.C. 20548

# Decision

**Matter of:** H. Angelo & Company, Inc.

**File:** B-260680.2

**Date:** August 21, 1995

Michael C. Spring, Esq., Law Offices of David L. Swimmer, P.A., for the protester.  
Gregory H. Petkoff, Esq., and Bryan P. Morgan, Esq., Department of the Air Force, for the agency.  
Adam Vodraska, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

Contracting agency had a compelling reason to cancel an invitation for bids (IFB) after bid opening and award where the IFB's notice of statutory cost limitation was misleading to the apparent prejudice of three of the six bidders, including the low bidder.

## DECISION

H. Angelo & Company, Inc. protests the Air Force's cancellation of invitation for bids (IFB) No. F41685-95-B-0001, for the renovation of military housing units at Laughlin Air Force Base, Texas, and the termination of the award made to Angelo under the IFB.

We deny the protest.

The first page of the IFB's two-page bid schedule, labeled "BASE BID ITEMS," requested prices for four base bid line items corresponding to four different types of military housing units. Bidders entered separate unit prices for construction/renovation and asbestos abatement for each base line item, as well as a total unit price and an extended price, which was the product of the total unit price multiplied by the specified estimated number of units to be renovated. The total base bid was the sum of the extended prices for the four base line items. At the top of this page, bidders were instructed not to include the costs for additive items in the base bid items, since additive items were listed separately. Immediately following this instruction was a notice to bidders stating that "there is a statutory cost limitation of \$57,500 per unit on this project" and that bids "exceeding the statutory cost limitation will not be considered for award."

The second page of the two-page bid schedule, labeled "ADDITIVE BID ITEMS," requested unit prices for two additive items, (1) termite treatment and (2) vinyl siding, for each of the four

types of housing units. Total additive unit and extended prices, based on the estimated number of units, were also requested. The total of the additive bid items was the sum of the extended prices for these four line items. There was no reference to the statutory cost limitation on this page.

Six bids were received by bid opening. J&J Maintenance, Inc. submitted the lowest aggregate bid (the total of the base bid and the additive bid); Angelo submitted the second low bid. The Air Force determined that J&J's bid was nonresponsive because two of its unit base bid line items, when added to the corresponding additive items, exceeded the \$57,500 per unit statutory cost limitation.<sup>1</sup> Since each of the line items in Angelo's base bid, when added to its corresponding additive prices, was within the statutory cost limitation and that firm's bid was otherwise responsive, the Air Force made award to Angelo. No other bid complied with the statutory cost limitation, at least in some respect, if the base prices were added to additive prices for the line items.

On March 6, J&J protested the award to our Office, contending that the Air Force improperly evaluated its bid because under the IFB the cost limitation was only to be applied to base bids, or, alternatively, that the solicitation was ambiguous as to whether the cost limitation applied to both the base and additive items. In response, the Air Force determined that the IFB was defective and terminated the contract with Angelo on April 11 in order to resolicit. J&J's protest was dismissed as academic on April 12. Angelo then protested on April 21 that the Air Force did not have a compelling reason to cancel the solicitation and that Angelo should retain the award.

Because of the potential adverse impact on the competitive bidding system of canceling an IFB after prices have been exposed, any cancellation after bid opening must be based on a compelling reason. FAR § 14.404-1(a)(1); HDL Research Lab, Inc., B-254863.3, May 9, 1994, 94-1 CPD ¶ 298. A compelling reason to cancel a solicitation exists where material solicitation terms are prejudicially ambiguous or in conflict. P.J. Dick, Inc., B-259166; B-260333, Mar. 6, 1995, 95-1 CPD ¶ 131. An ambiguity exists if a solicitation requirement is subject to more than one reasonable interpretation when read in the context of the solicitation as a whole and in a manner than gives effect to all its provisions. Phil Howry Co., B-245892, Feb. 3, 1992, 92-1 CPD ¶ 137. Contracting officials have broad discretion to determine whether a compelling reason to cancel exists, and our review is limited to considering the reasonableness of their decisions. Id.

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<sup>1</sup>Federal Acquisition Regulation (FAR) § 36.205 provides that contracts for construction shall not be awarded at a cost in excess of the statutory cost limitations, unless these limitations are waived for the particular contract, and that bids exceeding applicable statutory limitations "shall" be rejected unless an exemption is granted. Thus, in the absence of a proper waiver, a bid exceeding the applicable cost limitation generally must be rejected as nonresponsive since this provision is a material term of the solicitation. William G. Tadlock Constr., B-252580, June 29, 1993, 93-1 CPD ¶ 502; Ward Constr. Co., B-240064, July 30, 1990, 90-2 CPD ¶ 87.

Here, the agency had a compelling reason to cancel the IFB, and thus to terminate the contract awarded under the IFB, because the placement of the cost limitation notice in the solicitation was misleading. While the bid schedule notification that "[t]here is a statutory cost limitation of \$57,500 per unit on this project," standing alone, suggests that the limitation applies to both the base and additive items since it speaks in terms of a per unit basis, a bidder could also reasonably interpret the limitation as set forth in the IFB as only applying to the base bid items. In this regard, as described above, the provision was included only on the first page of the two-page bid schedule, which only contained the line items for the base bid, and the notice of the cost limitation was only inserted under the heading for the base bid items; no such notice was inserted on the second page of the bid schedule under the heading for the additive bid items, nor did the IFB specifically state that the base and additive prices would be added to determine compliance with the limitation. Three of the six bidders, including J&J, apparently viewed the cost limitation as applying only to the base bid items, as the prices for at least some of their corresponding additive items caused their total unit bids to exceed the cost limitation.<sup>2</sup>

In sum, the IFB did not clearly indicate that the cost limitation applied, as intended, to the total of the base bid items and to the additive bid items. Since three of the bids, including the bid of the apparent low bidder, J&J, were responsive under one interpretation but not the other, the ambiguity was clearly prejudicial to those bidders.<sup>3</sup> See Peak Inc., 71 Comp. Gen. 190 (1992), 92-1 CPD ¶ 124; Wheatley Assocs., B-209092, May 17, 1983, 83-1 CPD ¶ 522. Under the circumstances, the agency had a compelling reason to cancel the IFB and terminate the award in order to resolicit. Id.

The protest is denied.

/s/ Christine S. Melody  
for Robert P. Murphy  
General Counsel

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<sup>2</sup>Two other bidders exceeded the statutory cost limitation for base bid items.

<sup>3</sup>We also note that the government estimate itself exceeded that statutory cost limitation in that the government's estimate for the additive items, when added to the estimate for the base bids, caused the aggregate bid price for two of the line items to exceed \$57,500.