



G A O

Accountability * Integrity * Reliability

Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Welch Construction, Inc.

File: B-411879

Date: November 9, 2015

Douglas R. Arnold, for the protester.
Neil S. Deol, Esq., Department of Veterans Affairs, for the agency.
Young S. Lee, Esq., and Nora K. Adkins, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Agency's decision to cancel invitation for bids is unobjectionable where any contract based upon the bid prices received would exceed the amount budgeted for the project.

DECISION

Welch Construction, Inc., a service-disabled, veteran-owned small business (SDVOSB), of Marcellus, New York, protests the Department of Veterans Affairs (VA) cancellation of invitation for bids (IFB) No. VA247-15-B-0536 for the construction of an outpatient clinic addition in Columbia, South Carolina. Welch argues that the agency unnecessarily cancelled the IFB after bid opening.

We deny the protest.

BACKGROUND

The solicitation, issued on May 20, 2015, as a SDVOSB set-aside, contemplated the award of a fixed-price contract for the construction of an outpatient clinic addition at a VA medical center. IFB at 1, 18. The IFB required bidders to submit prices for a base bid, which included all work identified in the statement of work, and six bid alternatives. *Id.* at 8-9. On July 15, the VA received and opened bids from two firms. Welch was identified as the apparent low bidder. Contracting Officer (CO) Statement at 1-2.

After bid opening, the VA determined that it was necessary to cancel the solicitation. Id. The protester was notified of the cancellation on July 29.¹ Welch filed its protest with our Office on August 3.

DISCUSSION

Welch argues that the agency's decision to cancel the IFB was unnecessary and arbitrary. In response, the agency explains that it was required to cancel the IFB because any contract based upon the bids received would exceed the amount budgeted.

Cancellation of a solicitation after bids have been opened and prices have been exposed is only permitted where a compelling reason exists to cancel. Federal Acquisition Regulation (FAR) § 14.404-1(a)(1); First Enter., B-292967, Jan. 7, 2004, 2004 CPD ¶ 11 at 3. An agency's determination that funds are not available is a sufficient reason to cancel a solicitation, as agencies cannot award contracts which exceed available funds. SeaBox, Inc., B-400198, Aug. 25, 2008, 2008 CPD ¶ 163 at 3. It is not our role to question the unavailability of funds; the management of an agency's funds generally depends on the agency's judgement concerning which projects and activities should receive increased or reduced funding. First Enter., supra.

Here, the VA explains that the bids received were above both the amount budgeted for contract award and the independent government cost estimate. CO Statement at 1. Our review of the record confirms the agency's position. Under these circumstances, we find that the agency properly cancelled the solicitation.² SeaBox, Inc., supra.

The protest is denied.

Susan A. Poling
General Counsel

¹ The agency's cancellation notice advised Welch that the IFB was cancelled due to inadequate specifications. AR, Tab 7, Cancellation Notice to Welch, at 1.

² Welch's protest primarily challenges the agency's decision to cancel the IFB based upon inadequate specifications. We need not address this issue because, as discussed herein, the agency presented a compelling reason to cancel the solicitation (bid prices exceeding the amount budgeted) which supported its decision to cancel the IFB. See TaxSlayer LLC, B-411101, May 8, 2015, 2015 CPD ¶ 156 at 9 (an agency may subsequently present a different reason for cancelling a solicitation, so long as the subsequent reason would have supported the initial cancellation).