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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

*Watterspoon
PL-1*

FILE: B-189507

DATE: January 18, 1978

MATTER OF: OKC Dredging Inc.

DIGEST:

Contracting officer's cancellation of solicitation on basis that all bids exceeded Government estimate by more than 25 percent and were therefore unreasonably priced was not unreasonable and will not be disturbed where agency thoroughly reviewed and revised estimate in response to protest and where agency provided evidence reasonably supporting estimate.

The United States Army Corps of Engineers (Corps) issued invitation for bids (IFB) No. DACW01-77-B-0059 on April 28, 1977, for rental of a hydraulic cutterhead pipeline dredge for maintenance dredging of the Alabama River.

This IFB was issued under the Corps "Industry Capability Program", which provides for competition between Corps dredges and commercial dredges. Under the program, where a Corps dredge is available and capable of performing the advertised work, it is used as the basis for computing a "hired labor" estimate, which represents the cost of doing the work with the Corps dredge. This estimate is prepared in accordance with Engineer Regulation (ER) 1180-1-1 and is used to evaluate the price reasonableness of industry bids received. If the low industry bid is within 25 percent of the hired labor estimate and is otherwise acceptable, award is made to that bidder. If the low industry bid is more than 25 percent in excess of the estimate, 33 U.S.C. § 624 (1970) prohibits appropriated funds from being used to pay for the work, and the solicitation is canceled and the work is performed by the Corps dredge.

In the present case, the hired labor estimate of \$631,060.50 was prepared based on the Corps dredge "Collins", which was available to perform the work. The Corps also calculated an estimate of \$87,860.00 for "attendant costs" which represented costs of Corps surveys, supervision, inspection and overhead. This cost was included in the IFB and was added to industry bids and the hired labor estimate to evaluate industry bids. The following bids were received in response to the IFB:

B-109507

OKC Dredging, Inc.	\$1,037,110.85
Williams-McWilliams Co. Inc.	\$1,089,695.00
T.J. James & Co., Inc.	\$1,127,148.50

A preliminary review of the bids revealed that all bids exceeded the 25-percent statutory limitation.

OKC Dredging, Inc. (OKC), protested the reasonableness of the hired labor estimate to the Corps, attacking nearly every factor as incorrect. Pursuant to ER 1180-1-1, § 2-407.8(b) and § 1-372(h), the reasonableness of the estimate was reviewed at the District, Division and Headquarters levels of the Corps. Substantial changes were made in response to OKC's arguments and a revised estimate was developed. The revised estimate was \$728,275.50, leaving OKC's bid still 37.8 percent in excess of the estimate. Consequently, OKC's protest was denied, the solicitation was canceled pursuant to Armed Services Procurement Regulation (ASPR) § 2-404.1(b)(vi) (1976 ed.) permitting such cancellation when all bid prices are determined to be unreasonable, and work was authorized using the Corps dredge.

OKC protested this action to our Office arguing that the revised hired labor estimate was unreasonable and that the cancellation of the solicitation was therefore improper. OKC has again contended that nearly every component factor of the estimate is incorrect. OKC's argument is based on a comparison of the estimate here with an estimate on a previous solicitation which was based on the same dredge and similar dredging conditions. OKC also contends that the cost calculations used in the present estimate are not supported by the records of the dredge's average costs over the last 7 years.

During the pendency of this protest the Corps determined, pursuant to ASPR § 2-407.8(b)(3) (1976 ed.), that the dredging was urgently needed, and authorized performance by the dredge "Collins" on August 17, 1977. The dredging was completed on September 30, 1977.

ASPR § 2-404.1(a) (1976 ed.) provides that after bids have been opened award must be made to the lowest responsive, responsible bidder unless there is a "compelling reason" to reject all bids. Under ASPR § 2-404.1(b)(vi),

B-189507

an IPB may be canceled if the prices on all otherwise acceptable bids are unreasonable. Contracting officers have broad powers of discretion in deciding whether a solicitation should be canceled and our Office will not interfere with such a determination absent a lack of reasonableness. Hercules Demolition Corporation, B-186411, August 18, 1976, 76-2 CPD 173; Support Contractors, Inc., B-181507, March 18, 1975, 75-1 CPD 160; 39 Comp. Gen. 396 (1959).

In this case, since the IPB was canceled because all bid prices were determined to be unreasonable in comparison with the hired labor estimate, the key to the reasonableness of the cancellation is whether the hired labor estimate itself was reasonable.

As noted above, the estimate was reviewed for reasonableness at the District, Division and Headquarters levels of the Corps pursuant to ER 1180-1-1, § 2-407.8(b) and § 1-372(b). The estimate was revised substantially in response to OKC's protest. In response to questions raised at a conference held at GAG on September 23, 1977, the Corps reviewed the revised estimate and corrected several additional errors. Even with these additional corrections, however, OKC's bid still does not come within the awardable range.

OKC has alleged errors and inconsistencies in nearly every component factor of the estimate. For the component factors on which the Corps has not admitted errors and revised the estimate, it has, in our opinion, provided reasonable bases supporting its estimate. Also, even though there may be undiscovered additional errors in the estimate, that, in itself, does not make the estimate unreasonable. See C.J. Coakley Company, Inc., B-181057, July 23, 1974, 74-2 CPD 51.

In light of the Corps' thorough review and resultant revision of the estimate and the detailed supporting evidence it has provided, we cannot say that the estimate was unreasonable. Therefore, the contracting officer's cancellation of the solicitation had a reasonable basis and will not be disturbed. Accordingly, OKC's protest is denied. We do note, however, that since accurate hired labor estimates are critically important to the success of the

B-189507

Industry Capability Program and since both the initial and revised estimates contained substantial errors, the Corps' performance in this area should be improved. In this regard, the Corps has admitted that its performance in developing adequate and consistent estimates must be improved and has stated that Corps-wide regulations will soon be published to insure uniform estimating procedures for dredging projects.

Paul H. Stubbins
For the Comptroller General
of the United States