

P. Jannicelli  
Proc I



**DECISION**

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

8796

FILE: B-192495

DATE: January 8, 1979

MATTER OF: PM Contractors, Inc. DLG00541

DIGEST:

[Protest Concerning Cancellation of Invitation For Bids]

1. Contracting officer's cancellation of IFB for price unreasonableness and resolicitation of same requirement was proper where low bid of three received was nonresponsive and second low bid exceeded Government estimate by 72 percent and low nonresponsive bid by 48 percent. In such circumstances, cancellation determination was reasonable at time it was made and will not be disturbed where estimate was reviewed by project engineer before cancellation, even though estimate was later found to be low.
2. Bid of nonresponsive bidder is relevant to determination of what is reasonable bid price for purpose of determining whether or not to cancel IFB for price unreasonableness.
3. Bid prices received on recompetition have no bearing or propriety of original cancellation due to price unreasonableness. Contracting officer's determination to cancel will not be disturbed if reasonable at time determination to cancel was made.

PM Contractors, Inc., has protested the cancellation of invitation for bids (IFB) No. FWS-6-78-059 and the procurement of the identical requirement under IFB No. FWS-6-78-059A by the Fish and Wildlife Service, Department of the Interior. The procurement was for the construction of a "Prefabricated Metal Vehicle Repair and Storage Building."

Bid opening under IFB No. FWS-6-78-059 took place on June 30, 1978, and the following bids were received:

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<u>BIDDER</u>	<u>AMOUNT</u>
Parawan Construction	\$ 67,422.14
PM Contractors, Inc.	99,777.00
England Construction, Inc.	\$108,068.00

According to the contracting activity's report on the protest, the decision to cancel IFB No. FWS-6-78-059 and resolicit the requirement was reached as follows:

"The Government estimate for the project was \$60,000. The apparent low bidder, Parawan Construction, was determined to be nonresponsive because of failure to submit bid bonds. The second low bidder, P. M. Contractors, Inc., was 66% in excess of the Government estimate and 47% above the nonresponsive low bid. The project engineer reviewed his estimate and determined that it was valid. This was supported by the fact that the nonresponsive low bid was within 11% of the estimate. Based on the above information, the Regional Engineer recommended cancellation and re-advertisement due to unreasonable price. The Contracting Officer concurred and signed a Determination and Findings, dated July 5, 1978, confirming this. The rejected bidders were notified, the project readvertised, and the solicitation reissued as IFB No. FWS-6-78-059A on July 14. The bidders list was substantially expanded in the hopes of increasing competition and receiving a more reasonable price."

We note that the actual Government estimate for the project was \$58,130. Accordingly, the bid of Parawan Construction was actually 16 percent above the estimate, while the bid of PM Constructors was actually 72 percent above the estimate and 48 percent above Parawan's bid.

Bid opening under the resolicitation, IFB No. FWS-6-78-059A took place on August 4, 1978, and the following bids were received:

1. Gronemen's General Contracting	\$ 92,160
2. Williams and Peterson Construction Co.	\$105,778
3. P M Contractors, Inc.	\$109,777
4. Blaine Wadman Construction Co.	\$126,366

Since the bids received under the resolicitation were still greatly in excess of the Government estimate the Regional Engineer again reviewed the estimate and recommended award to the low bidder under the resolicitation. This review revealed the following factors which the Fish and Wildlife Service believes account for receipt of bids substantially in excess of the estimate and which justify award under the resolicitation:

1. Although the remoteness of the construction site had been considered,, it should have been allowed a greater price differential.

2. A cement shortage resulting in greatly increased prices had not been taken into account.

3. An abundance of work for contractors in metropolitan areas should have been considered since larger price differentials would have to be paid to get contractors to work in such remote areas.

PM Contractors protested to our Office on July 28, 1978, that the contracting officer's cancellation of the original solicitation was unreasonable in view of the fact that the Government estimate was too low. The protester contends that, since bids had been opened on the original solicitation before it was canceled, the protester's ability to bid on the resolicitation was prejudiced because its original bid had been revealed to other potential bidders. PM Contractors argues that the original solicitation should be reinstated and that it should receive award as the lowest responsible, responsive bidder. The protester has not made any contentions specifically concerning the resolicitation other than to protest the cancellation of the original solicitation.


Section 2-404.1(a) of the Defense Acquisition Regulation (DAR) (1976 ed.) provides that, in an effort to preserve the integrity of the competitive bidding system, 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 DAR § 2-404.1(b)(vi), an IFB may be canceled if the prices on all otherwise acceptable bids are determined by the contracting officer to be 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. OKC Dredging Inc., B-189507, January 18, 1978, 78-1 CPD 44. The determination may be based upon comparison with a Government estimate, past procurement history, current market conditions, or any other relevant factors, including any which may have been revealed by the bidding. Schottel of America, Inc., B-190546, March 21, 1978, 78-1 CPD 220.

In the present case, we cannot find that the contracting officer's decision to cancel the original solicitation was unreasonable. After bids were opened under solicitation No. FWS-6-78-059, the project engineer reviewed his estimate and determined that it was valid. The contracting officer acted reasonably when he relied upon the project engineer's review of the original estimate--especially in view of the project engineer's superior technical expertise on such matters. See C. J. Coakley Company, Inc., B-181057, July 23, 1974, 74-2 CPD 51. Moreover, we have held that the bid of a nonresponsive bidder is relevant to the determination of what is a reasonable bid price. ITE Imperial Corporation, Subsidiary of Gould, Inc., B-190759, August 14, 1978, 78-2 CPD 116. In fact, a contracting officer's determination regarding price reasonableness may properly be based solely on a comparison with such a bid. Schottel of America, Inc., *supra*. Parawan's bid was reasonably close to the price the project engineer had estimated the requirement to cost, and, even though Parawan's bid was rejected because of failure to submit a bid bond, it was still evidence to confirm the accuracy of the estimate. There was no way that the contracting officer could know at the time he decided to cancel the solicitation that a resolicitation would result in such high prices, and, at the time he made the decision to cancel, the engineer's estimate appeared to be valid.

Consequently, we believe that while the Fish and Wildlife Service's estimate may have been somewhat lower than it should have been, the determination to cancel had a reasonable basis in fact at the time of the cancellation. Moreover, the fact that the recompetition did not result in substantially lower prices than those obtained in the original solicitation has no bearing on the propriety of the original cancellation. Nordam, Division of R.H. Siegfried, Inc., B-189996, August 17, 1978, 78-2 CPD 126.

In view of the above, the protest is denied.

  
Deputy Comptroller General  
of the United States