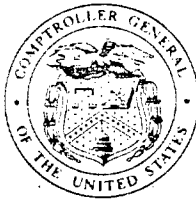


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DECISION



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

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FILE: B-196352

DATE: February 12, 1980

MATTER OF: Penn Landscape & Cement Work

DL603897

[Protest of

Cancellation of IFB]

DIGEST:

1. Determination as to unreasonableness of bid prices and rejection of bids will be sustained barring bad faith or fraud. Mere speculation of protester that Government estimate is too low is not sufficient basis to reverse contracting officer's decision to reject bids and cancel solicitation.
2. Our Office will not review determination to set aside procurements under 8(a) program absent showing of fraud or such willful disregard of facts as to imply bad faith. Section 8(a) set-aside will not be disturbed where it is in consonance with objective of Army-SBA Interagency Agreement to make Army procurements available to minority businesses.

The Department of the Army, Corps of Engineers (Corps), issued invitation for bids (IFB) DACW59-79-B-0084 for the construction of two access areas (hunting and fishing) at Mahoning Creek Lake, Mahoning, Pennsylvania.

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Bids, covering the two phases of the project, were opened on September 13, 1979. The Government's total estimate was \$200,893. The low bid submitted by Penn Landscape & Cement Work (Penn) was \$71,303.75 below the next low bid; however, Penn's bid was 46.4 percent above the Government's estimate.

The contracting officer rejected all bids and canceled the IFB. Moreover, the contracting officer plans to submit two IFB's (one for hunting access area and one for fishing access area) to minority firms under the Small Business Administration's (SBA) 8(a) program.

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Penn protests both of these actions by the contracting officer. According to Penn, the Government's estimate is far too low, given the current cost of fuel, materials, and labor, and the decision to offer the projects to minority firms is very distasteful and inequitable, especially since Penn spent \$4,000 in bid preparation costs.

As a result of Penn's protest, the Corps reviewed its estimate and made certain revisions which added \$16,200 to the Government's estimate. Even with these revisions, Penn's bid price was over 30 percent above the Government's estimate.


The Corps contends that all bid prices were unreasonable and were properly rejected. In this connection, the Corps states that the contracting officer's right to reject unreasonable bids is supported by decisions of the Comptroller General. Further, the Corps states that by splitting the work into two contracts for the two areas at Mahoning Creek Lake the projects will be appropriate for the SBA's 8(a) program pursuant to the Department of the Army's (DA) Interagency Agreement with SBA to submit projects to minority contractors.

Section 2-404.1(a) of the Defense Acquisition Regulation (DAR) (1976 ed.) provides in substance that after bids have been opened award must be made to the lowest responsible bidder unless there is a compelling reason to reject all bids and readvertise. However, under DAR § 2.404.1(b)(vi), the invitation may be canceled after opening if the prices on all otherwise acceptable bids are unreasonable. In this connection, we have stated that a determination as to unreasonableness of price will be sustained barring bad faith or fraud. Hercules Demolition Corporation, B-186411, August 18, 1976, 76-2 CPD 173. See also Building Maintenance Specialists, Inc., B-186441, September 10, 1976, 76-2 CPD 233.

In the instant case, we have only the unsupported statement of the protester that the Government's estimate is too low. Based on this information alone, we are unable to conclude that the rejection of all bids due to unreasonable prices was improper.

With respect to the set-aside, we have held that this Office will not review decisions to set aside procurements under the 8(a) program absent a showing of fraud or such willful disregard of the facts by Government officials as to imply bad faith. Vector Engineering, Inc., B-193874, October 11, 1979, 79-2 CPD 247. Based on the record before us, we find no evidence or allegation of fraud or anything which would imply bad faith. In fact, the set-aside seems to be in consonance with the ultimate objective of the DA-SBA Interagency Agreement, which is to make more procurements available to minority businesses.

The protest is denied.


Deputy Comptroller General
of the United States