

DECISION



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

FILE: B-193735

DATE: September 11, 1979

MATTER OF: Atkinson Builders, Inc.

DIGEST:

DLG 02709

1. Cancellation of invitation restricted to minority business concerns was proper because inadequate competition was obtained to insure a reasonable price.
2. Protester's objection to agency's requiring affidavit to determine eligibility for procurement set aside for minority firms is moot because solicitation was properly canceled and reprocurement was not restricted to minority firms.

Atkinson Builders, Inc. (Atkinson) protests the cancellation of invitation for bids (IFB) No. DOT-FR-3043/CDC, and subsequent resolicitation by the Federal Railroad Administration (FRA), Department of Transportation (DOT), for roofing and parapet reconstruction, at Union Station, New Haven, Connecticut.

BASES FOR PROTEST

Atkinson asserts that since its bid price was reasonable it should have been awarded the contract and the solicitation should not have been canceled. (In addition, the protester believed the procurement should be retained as a total set-aside for minority business rather than resolicited on an unrestricted basis.) Finally, the protester believes it was discriminated against because it was requested to furnish a "Minority Business Enterprise Disclosure Affidavit" to prove its eligibility under the canceled procurement.

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[Protest Involving Solicitation
CANCELLATION]

BACKGROUND

The agency restricted this procurement to minority business concerns, that is, bids were considered only if submitted by minority businesses. The agency believed the restriction was necessary to insure full participation by minority businesses in the procurements generated on the Northeast Corridor Improvement Project, of which this procurement is a part. (The project is a \$1.8 billion, multi-year project for which there has been established a 15 percent goal to utilize minority business enterprises.) Furthermore, the agency reports that prior to restricting this procurement, at least three firms capable of performing the technical work must have been identified to provide confidence that competition would be achieved.

Only two bids were received, with Atkinson low at \$643,000. The other bid was nonresponsive. In view of the large disparity between the only responsive bid and the Government's estimate, of \$476,500, the agency requested Atkinson to furnish information as to the work elements in its pricing to insure that nothing had been overlooked in the Government estimate. Subsequently, the estimate was reviewed by the design contractor for the project and was revised upwards to \$621,400. This figure included a 10 percent contingency factor to cover the "vagaries of estimating." The FRA Project Manager also developed an independent estimate of \$592,000 using "maximum costs."

Since
(The contracting officer determined that the bid of ~~Atkinson should be rejected because he could not determine that the bid was fair and reasonable, and that the solicitation should be canceled and readvertised on an unrestricted basis in order to insure an adequate number of competitive bids.~~ *It was decided that*)

DISCUSSION

Although we have serious reservations as to whether agencies may restrict competition for procurements to minority firms other than under section 8(a) of the Small Business Act or other express statutory authority, we

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need not decide that question in this case because the requirement has been reprocured without restriction. As to the propriety of the cancellation, an award, generally, must be made unless there is a compelling reason to reject all bids and cancel the solicitation. FPR § 1-2.404-1(a). However, (a solicitation may be canceled if the bids received do not provide competition adequate to insure reasonable prices.) FPR § 1-2.404-1(b)(7). In view of the record, *(we believe DOT had a reasonable basis for finding that there was inadequate competition in this case to insure the reasonableness of the protester's price, given the restricted nature of the procurement and the fact that only one responsive bid was received. In these circumstances, we believe cancellation is appropriate irrespective of the validity of the protester's allegation concerning the accuracy of the Government's estimate.)*

Throughout its protest, Atkinson alleged that the requirement by FRA for submission of a business enterprise affidavit was discriminatory and prejudicial to Atkinson. However, no probative evidence to this effect has been produced, and our review of the record before us discloses none. In any event, we consider this issue moot because the requirement properly was resolicited without restriction and the affidavit is no longer necessary.

The protest, therefore, is dismissed in part and is denied as to the remainder.

RAK:11m.
Deputy Comptroller General
of the United States