

**DECISION**



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

12543

PL-1  
Mr. Carter

*[Protest of VA Contract Award]*

FILE: B-195998

DATE: January 15, 1980

MATTER OF: Primeco, Inc. *DLG 03626*

**DIGEST:**

1. Negotiation of contracts is proper after protester's low bids submitted in response to advertised solicitations are determined to be excessive. Participation in follow-on negotiated procurement is not limited to participants in advertised procurement. Offerors in negotiated procurement may not be advised of the number and identity of their competitors.
2. Where contrary assertions by protester and agency and documents tending to support agency position constitute only evidence, protester has not met burden of establishing that it was not told of initiation of competitive negotiations after cancellation of advertised procurements.

Primeco, Inc. (Primeco), protests the award of contracts to another offeror for three projects, heat reclamation, kitchen hood remodeling, and an air conditioning system for the intensive care unit, at the Veterans Administration Medical Center (VAMC) in Beckley, West Virginia. *DLG 03627*

The contracting officer canceled the original invitations for bids (IFB) for these projects and negotiated the procurements after determining Primeco's bid, the only one received for two of the projects and the low bidder on the third, to be excessive. Primeco's bids substantially exceeded the Government's estimates for these projects. On August 22, 1979, the contracting officer advised Primeco by telephone that the bids for all three projects were excessive, that the bids were rejected, and that negotiations were now being conducted for award of the contracts. Primeco was requested to

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*DLG 03628*

and did submit quotations by telephone for the three projects followed by a confirmatory telegram. Jaral Constructors, Inc. (Jaral), was similarly contacted and responded with a lower quotation for each of the three projects. The contracts were awarded to Jaral.

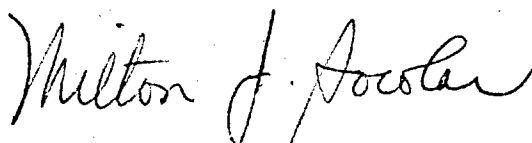
Primeco contends that it was never advised that the original procurements were canceled or that the projects were under negotiation. Primeco also asserts that it was led to believe that it was the only vendor under consideration for the two projects on which it had been the sole bidder. Further, although it was aware that another bidder on the remaining project was being solicited, it was not made aware that contractors which did not bid in response to the original solicitation were being contacted. Primeco suggests that the failure to advise it of the negotiations was deliberate.

We find no impropriety in the contracting officer's actions. The conduct of negotiations after a finding that bids submitted in response to an advertised solicitation are excessive is authorized by the provisions of 41 U.S.C. § 252(c)(14) (1976). See also Federal Procurement Regulations (FPR) § 1-3.214 (1964 ed. amend. 192). We know of no authority which limits participation in the follow-on negotiated procurement to only those firms which bid on the advertised solicitation. In fact, FPR § 1-3.214(b)(2) provides that the negotiated price is the lowest negotiated price offered by "any responsible supplier." Once proposals are received in negotiated procurements, offerors may not be advised of the number and identity of their competitors. FPR § 1-3.805-1(b) (1964 ed. amend. 153).

Finally, we note that the agency disputes Primeco's assertion that it was never advised of the cancellation of the advertised procurement and the initiation of competitive negotiations. In support of its position, the agency offers a copy of a telephone contact memorandum in which it is asserted that Primeco was advised of these events and that later on the same day Primeco submitted its quotations by telephone. We note that Primeco confirmed its quotations by telegram 4 days later, a fact which, while certainly

not conclusive, lends some credence to the agency's position. In these circumstances, we think Primeco has failed to meet the burden of proving its allegation. Ikard Manufacturing Company, B-192248, B-192748, B-194585, August 29, 1979, 79-2 CPD 161; Downtown Copy Center - Reconsideration, B-193157.2, August 21, 1979, 79-2 CPD 137.

The protest is denied.

A handwritten signature in cursive script, reading "Milton J. Fowler".

For The Comptroller General  
of the United States