

Feldman, P. L.

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DECISION



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

[Protest Against IFB Cancellation]

FILE: B-197557

DATE: August 18, 1980

MATTER OF: The Holloway Company

DIGEST:

1. Although protester may have suspected procuring activity's reason for canceling IFB more than 10 working days before protest was filed, subsequent erroneous information provided by activity during that period was confusing as to actual reason for cancellation. Therefore, protest filed within 10 days after protester's receipt of correct information from agency is timely.
2. Cancellation of solicitation by procuring activity because bids received exceeded Government estimate was proper exercise of administrative discretion, where protester has not shown that Government estimate was erroneous.

The Holloway Company (Holloway) protests the cancellation of invitation for bids (IFB) N00123-79-R-0215 issued by the Naval Regional Contracting Office, California. The solicitation covered a Navy requirement for one turntable assembly for a pontoon elevated causeway system, with an option for one additional system. Basically, the Navy decided to cancel the IFB because it estimated that the Naval Civil Engineering Laboratory (Laboratory) could build the turntable at a substantially lower cost than the bid prices received. Holloway disputes that position.

We deny the protest.

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TIMELINESS

As a preliminary matter, the Navy argues that Holloway's protest is untimely. The Navy states that it orally advised Holloway in late October that the solicitation had been canceled. By mailgram dated October 30 to the Navy, Holloway confirmed this oral advice and stated that "it seems quite unfair for you to place the order with the Laboratory." The Navy argues that the protest, filed in our Office on January 22, 1980, thus was filed more than 10 working days after Holloway knew the basis for it, and therefore is untimely. See 4 C.F.R. § 20.2(b)(2) (1980).

However, in a letter to Holloway dated November 1, the Navy stated "it is anticipated that a similar requirement will be forthcoming in approximately two (2) years." After recognizing that the quoted statement was erroneous--the Navy intended to have the Laboratory build the turntable--the Navy did not advise Holloway of this fact until January 1980. The record shows that the Navy's November 1 letter containing the erroneous information led the protester to believe that while the Navy lacked funds for this procurement, the agency still would build the item commercially in two years; a letter from Holloway to the Navy dated November 12 evidences the protester's apparent confusion in that it takes issue with the Navy's decision to delay its requirement for two years. In view thereof, and since the Navy did not correctly inform the protester that the Laboratory would build the item until January 1980, we consider Holloway's protest that such action would not be appropriate, filed within 10 days after the agency's January advice, as timely filed.

CANCELLATION

To protect the integrity of the competitive bidding system, once bids are opened and prices exposed there must be a compelling reason to cancel a solicitation. Defense Acquisition Regulation § 2-404.1(a) (1976 ed.); Willamette Timber Systems, Inc., B-193300, April 10, 1979, 79-1 CPD 249. Nevertheless, a contracting officer has broad authority to reject all bids and cancel, and we will not question the determination in that respect unless it is shown to be unreasonable. Hercules Demolition Corporation,

B-186411, August 18, 1976, 76-2 CPD 173. In this connection, we have held that where the low bid under an invitation is as little as 7.2 percent greater than what the Government estimates that it should pay for the supplies or services, rejection of all bids may be a proper exercise of the contracting officer's discretion. Building Maintenance Specialists, Inc., B-186441, September 10, 1976, 76-2 CPD 233.

Here, Holloway bid \$233,000 to furnish one turntable (plus a \$15,000 warranty) and \$220,800 for the optional one (plus a \$15,000 warranty), for the low evaluated total bid of \$483,800. The other two bids received were between \$218,600 and \$282,000 per unit, plus warranties. The solicitation was canceled because the Navy estimated that the Laboratory could build a turntable assembly for only \$127,500.

In response to the protest, the Navy submitted an itemized breakdown of labor and material costs to substantiate its estimate of \$127,500. The only evidence proffered by Holloway to show any impropriety in the Navy's estimate is a copy of a supplier's quotation showing that the main gear for the turntable would cost Holloway between \$19,000 and \$20,000, whereas the Navy estimated the main gear cost as approximately \$3,000. Holloway contends that the reason for the low Navy estimate for that item is that the Laboratory would "flame cut" rather than "machine cut" the gear's sprocket wheel segments, which the firm contends was precluded in the specifications under which the competition was conducted. On that basis, Holloway speculates that the estimate improperly includes other costs which also do not reflect the bid requirements. In addition, Holloway maintains generally that the bid prices received established the reasonableness of the low bid and "verified the value of the turntable."

Further, Holloway suggests that commercial bidders are at a competitive disadvantage with respect to the Laboratory because, unlike other "bidders," the Laboratory may simply "ask for additional money" if it exceeds its estimated cost.

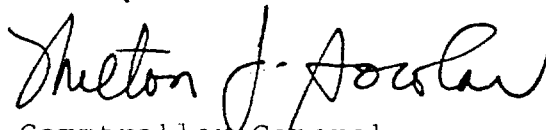
Contrary to the protester's first point, the specifications in section F.3.7.1, which provides that "[f]lame cutting * * * may be employed * * *," appear to specifically

permit "flame cutting," and we thus cannot say that basing the estimate in part on this evidently less expensive method than Holloway intended to use was improper. With respect to the conclusion Holloway would draw from the other bid prices, we have held that the fact that a number of bids may exceed the Government estimate cannot by itself establish that the estimate was unreasonable. Gamm Contracting Company, B-193377, July 10, 1979, 79-2 CPD 21. Rather, the protester still must affirmatively prove that the procuring activity's estimate was unreasonable. Ureco Construction, Inc. and American Timber Co., B-194550, B-194550.2, November 7, 1979, 79-2 CPD 335.

Finally, regarding what Holloway characterizes as the Laboratory's unfair "advantage" in that it can exceed the Navy's estimate without penalty to the prejudice of bidders whose bids were viewed as unreasonably high, we have recognized that a Government estimate by definition reflects inexact computations. Schottel of America, Inc., B-190546, March 21, 1978, 78-1 CPD 220. However, as indicated above, absent evidence to the contrary, an estimate properly may be viewed as an acceptable measure of what a supply or service reasonably should cost the Government. Building Maintenance Specialists, Inc., supra. In any event, in the instant matter the Navy advises that one turntable assembly is 50 percent completed and the estimate of \$127,500 is still considered realistic.

Accordingly, and since Holloway has provided no other evidence aside from speculation as to the propriety of the estimated costs of unspecified elements of the Navy's estimate, the protester has failed to meet the burden to show that the cancellation of the solicitation based on the estimate of \$127,500 was unreasonable. See Ureco Construction, Inc. and American Timber Co., supra.

The protest is denied.



For The Comptroller General
of the United States