



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: A.T.F. Construction Company, Inc.
File: B-228060, B-228061
Date: October 30, 1987

DIGEST

1. Contracting officer's decision to cancel invitation for bids based on unreasonableness of bid prices was proper where low bid exceeded government estimate by 46 percent and there is no showing that the decision to cancel was based on bad faith or fraud on the part of contracting officials.
2. Cancellation of invitation for bids after bid opening does not result in impermissible auction under resolicitation where IFB was canceled due to unreasonable bid prices.
3. Listing on invitation for bids (IFB) of estimated cost range higher than actual government estimate is a minor procedural error which does not affect propriety of contracting agency's decision to cancel IFB due to unreasonable bid prices.
4. Challenge to alleged defect in invitation for bids first raised in protest to contracting agency before bid opening is untimely where filed with General Accounting Office more than 10 days after agency proceeded with bid opening without taking corrective action in response to the protest.

DECISION

A.T.F. Construction Company, Inc., protests the decision by the Corps of Engineers to cancel invitation for bids (IFB) No. DACA21-87-B-0159, for construction of an addition to a child care center at Fort Benning, Georgia, and resolicit its requirements under a new IFB. We deny the protest in part and dismiss it in part.

The original IFB, issued as a total small business set-aside, called for bids on two line items, the addition to the child care center and preparation and development of the site. Award was to be made based on the lowest total bid for both line items. Bids were submitted by two small

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businesses, the protester, which bid a total of \$363,246, and the Geiger Company, which bid a total of \$385,919. The government estimate was \$248,450. Based on the 46 percent difference between A.T.F.'s low bid and the government estimate, the contracting officer decided that both bids were unreasonably high and canceled the IFB. The contracting officer then issued a new IFB on an unrestricted basis which included an additional line item for asbestos removal work. Bids were received from Geiger (\$357,233), A.T.F. (\$361,246) and DeRalco, Inc. (\$387,540). Each of the bidders is a small business.

A.T.F. contends that the Corps acted improperly in rejecting its bid and canceling the original IFB. We disagree. Under the Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.404-1(c)(6) (1986), an IFB may be canceled after bid opening if the prices of all otherwise acceptable bids are unreasonable. The determination that prices are unreasonable is a matter of administrative discretion which we will not question unless it is clearly unreasonable or there is a showing of fraud or bad faith on the part of contracting officials. Western Roofing Service, B-219324, Aug. 30, 1985, 85-2 CPD ¶ 255. In addition, such a determination may be based on a comparison of the bid price with the government estimate. Harrison Western Corp., B-225581, May 1, 1987, 87-1 CPD ¶ 457.

Here, the Corps states that it has reexamined the government estimate and found it to be reasonable, and has submitted for our in camera review documents showing the elements comprising the estimate. While the protester objects generally to the government estimate, it has provided no elaboration or support for its position, and, as a result, we see no basis to conclude that the contracting officer's decision to reject the bids under the original IFB due to unreasonable prices was unreasonable. Spruill Realty/Construction Co., B-209148.2, Jan. 31, 1983, 83-1 CPD ¶ 102. Further, since the low bid under the IFB was 46 percent higher than the government estimate, and there is no evidence of fraud or bad faith, the contracting officer's decision to cancel the IFB was proper. Harrison Western Corp., B-225581, supra.

A.T.F. attempts to show that the determination that its original bid price was unreasonable was the result of bad faith on the part of the contracting officer. As support for its contention, A.T.F. relies on the amount of the difference between Geiger's low bid and the government estimate under the new IFB issued after the original IFB was canceled. That estimate, which included additional asbestos removal work not called for in the original IFB, was \$283,600; Geiger's bid (\$357,223) was approximately 26 percent higher. A.T.F. argues, however, that the government

estimate should have been 15 percent lower, and, as a result, Geiger's bid actually was 41, not 26, percent higher than the estimate. According to A.T.F., the contracting officer would be acting in bad faith by accepting Geiger's 41 percent higher bid under the new IFB when A.T.F.'s original bid under the original IFB was rejected as unreasonably high for exceeding the government estimate by 46 percent.

We see no basis to question the cancellation of the original IFB, even assuming, as A.T.F. argues, that the second government estimate was too high with regard to the asbestos removal work and Geiger's bid thus exceeded the estimate by approximately the same amount as A.T.F.'s bid exceeded the original estimate. At the time when the decision to cancel the original IFB was made, the contracting officer had no way of predicting the prices which would be received under the new IFB, and it is within the contracting officer's discretion to decide that the bids on the resolicitation, even if they again exceed the government estimate, are the lowest prices available. King Machine Inc., B-218960, et al., Aug. 20, 1985, 85-2 CPD ¶ 199.

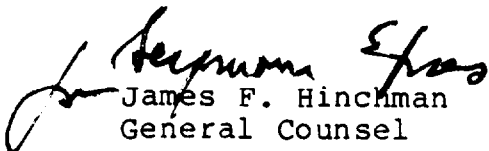
A.T.F. also argues that cancellation of the IFB after bid opening and disclosure of the government estimate created an impermissible auction under the resolicitation. We disagree. As noted above, the FAR, 48 C.F.R. § 14.404-1(c)(6), specifically authorizes cancellation after bid opening where the prices are found to be unreasonable. Here, while it is possible that Geiger lowered its bid under the resolicitation based on its knowledge of A.T.F.'s price under the initial IFB, there is no indication that the contracting officer canceled the IFB for the purpose of creating an auction. Further, although any resolicitation after rejection of unreasonably priced bids allows firms to bid with knowledge of the prior bid prices, the second competition also gives bidders who submitted unreasonable prices, like A.T.F., another opportunity to bid at a reasonable price. Daniels Mfg. Co., B-223475.2, Jan. 13, 1987, 87-1 CPD ¶ 51.

A.T.F. further argues that while the actual government estimate under the canceled IFB was \$248,450, the estimated cost range was inaccurately listed on the IFB as \$250,000-\$500,000. A.T.F. maintains that this inaccuracy misled it in formulating its bid price. We find this argument to be without merit, since bid prices are not limited to the confines of the estimated cost range and bidders remain responsible for independently preparing their own bids. Western Ventures, Inc., B-210611, Mar. 1, 1983, 83-1 CPD ¶ 218.

A.T.F. also raises other objections to the resolicitation. A.T.F. first argues that Geiger's bid price as recorded on the bid abstract (\$357,233) is lower than the bid price announced at bid opening (\$360,000). The Corps acknowledges the discrepancy and has advised our Office that the price on the bid abstract reflects a modification lowering its bid which Geiger submitted before bid opening. Due to government mishandling of the modification, it was not delivered to the bid opening room by the bid opening time. The Corps decided to accept the modification to Geiger's bid. Under these circumstances, we see no basis to object to the Corps' decision and, in any event, acceptance of the bid modification did not prejudice A.T.F. since it reduced Geiger's already low bid.

In its comments on the Corps' supplemental report on the protest, A.T.F. also states that in its view construction of the child care center addition called for by the IFB may require additional asbestos removal work in areas beyond the limited area specified in the second IFB. To the extent that A.T.F. is asserting that the agency's needs are greater than what is specified in the IFB, the protester raises an issue we do not consider. See generally, S.A.F.E. Export Corp., B-212489, Feb. 6, 1984, 84-1 CPD ¶ 146. In any event, this ground of protest concerns an alleged impropriety apparent on the face of the IFB which under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1987), had to be filed before bid opening. While A.T.F. mentioned the issue of additional asbestos removal work in a letter to the contracting officer before bid opening, it is not clear whether the letter was intended as a protest of the Corps' failure to include more asbestos removal work in the IFB. Even assuming the letter constituted a timely protest to the Corps, the issue was not timely raised before our Office. After the Corps proceeded with bid opening under the IFB on September 21 without taking corrective action on the protest, A.T.F. had 10 days to file a protest on this ground with our Office. See 4 C.F.R. §§ 21.0(e), 21.2(a)(3); Bender Shipbuilding & Repair Co., Inc., B-225578, Apr. 10, 1987, 87-1 CPD ¶ 398. As noted above, however, the issue was not raised until A.T.F.'s comments on the Corps' report were filed on October 15, more than 10 days after the September 21 bid opening.

The protest is denied in part and dismissed in part.


James F. Hinchman
General Counsel