



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Speer Construction Company, Inc.

File: B-228339.2

Date: February 10, 1988

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### DIGEST

Contracting officer's decision to cancel solicitation based on price unreasonableness was proper where only bid received exceeded government estimate by more than 33 percent and protester has not established that government estimate was incomplete or inaccurate.

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### DECISION

Speer Construction Company, Inc., protests the cancellation after bid opening of invitation for bids (IFB) No. DE-FB96-87P014118, issued by the Department of Energy (DOE), for a security system for the Big Hill Storage Facility and Raw Water Intake Structure, Jefferson County, Texas, for the Strategic Petroleum Reserve.

We find the protest without merit.

The solicitation was issued as a total small business set-aside, and the government estimate for the work in question was \$6,522,700. Speer's bid of \$8,690,000 was the only bid received. Based on the 33.2 percent difference between Speer's bid and the government estimate, the contracting officer determined that Speer's bid was unreasonable as to price and canceled the IFB. No new IFB has been issued.

Speer contends that its price was reasonable and that the government estimate was too low because it was incomplete, and therefore the government acted improperly in rejecting Speer's bid and canceling the IFB.

Under Federal Acquisition Regulation § 14.404-1(c)(6), 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

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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. A.T.F. Construction Co., Inc., B-228060 et al., Oct. 30, 1987, 87-2 CPD ¶ 436. Generally, such a determination may be based on a comparison of the bid price with the government estimate, and we have found cancellation to be justified where the low responsible bid exceeded the government estimate by as little as 7.2 percent. Harrison Western Corp., B-225581, May 1, 1987, 87-1 CPD ¶ 457.

DOE states that it has reexamined the government estimate and obtained reverification from the architect-engineer firm which prepared the estimate, and has determined that the estimate is reasonable. Speer contends that the government estimate fails to include any amount for the Raw Water Intake Structure (RWIS), particularly the RWIS alarm central station (control) building, which Speer estimates constitutes \$650,000 of its bid. Further, Speer contends that the government estimate does not include engineering costs which Speer estimates at \$300,000, and that the government bonding estimate of \$64,600 is substantially below Speer's estimate of \$105,000 for bonding and insurance.

DOE states that all of the RWIS costs, including those for the control building, are included under the broader general cost categories in the government estimate which was provided to the protester with the agency report. That estimate is a summary sheet which is not broken out separately by structure. However, we have examined the detailed government estimate, in camera, and it does include specific RWIS costs, including costs for the control building. We note that this building is an 8' by 10' by 8' pre-engineered metal structure, for which the government estimate, including all structural, set-up, and site work is significantly less than the \$650,000 estimate proffered by Speer.

Speer also contends that the government estimate does not include engineering costs because the summary sheet does not contain an entry next to the line entitled "engineering." While the agency report does not directly address this issue, it also appears that engineering costs are included within the other broad cost categories, such as the "architectural" category under which the government estimate is \$651,300. In this regard, we note that Speer's cost estimate also does not break out architectural or engineering costs by separate category. Rather, Speer seems to have extrapolated the \$300,000 figure from the other categories, in the same manner as was apparently done under the government cost estimate.

In any event, even if Speer were correct with respect to the agency's failure to include in its estimate \$300,000 in engineering costs, the effect would be to increase the government estimate to \$6,822,700, compared to Speer's bid of \$8,690,000. Since Speer's bid would have remained more than 27 percent greater than the government estimate, there still would have been a reasonable basis for a determination of price unreasonableness, and it is doubtful that this change would have affected the contracting officer's determination. See Harrison Western Corp., B-225581, supra.

With respect to the bonding and insurance costs, there is nothing in the record which suggests that Speer's estimate is more accurate than the government's, and much of the difference results from Speer's higher estimate for the remainder of the contract work, since bonding costs are normally based on a percentage of these other costs.

Accordingly, we find no basis to question the contracting officer's decision to reject Speer's bid under the IFB as unreasonably high. See Spruill Realty/Construction Co., B-209148.2, Jan 31, 1983, 83-1 CPD ¶ 102. Further, since the only bid under the IFB was more than 33 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.

Speer also contends that its position is substantiated by the fact that DOE plans to reissue the solicitation on an unrestricted basis with a \$8,690,000 cost estimate. In support of this contention, Speer cites a description in the October 1987 Dodge Report to this effect. DOE specifically states that the cost estimate has not been changed, and that the solicitation has not been reissued. The Dodge Report is a private publication which has no binding effect on the government. Moreover, it appears that Speer has misinterpreted the notice. It states nothing in regard to a resolicitation but is reporting the results of Speer's bid on this solicitation. While the government estimate listed has an asterisk by it indicating "changed data," the estimate is reported to be the exact amount shown as Speer's bid, \$8,690,000, which may indicate a printing error.

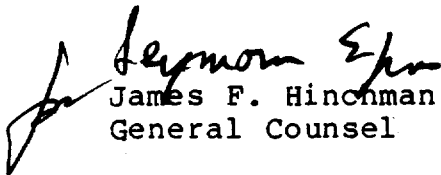
Speer points out that the IFB did not list the government estimate as \$6,522,700, but rather indicated that it was in the \$5--\$10 million range. There is no inconsistency between this range and the actual government estimate. Moreover, we have explicitly held that even if an estimated cost range is inaccurately listed in an IFB, it is without

effect since bid prices are not limited to the confines of the estimated cost range and bidders are responsible for independently preparing their own bids. A.T.F. Construction, Co., Inc., B-228060, supra.

Speer also contends that at bid opening the contracting officer admitted that the \$6,522,700 government estimate was not current and had been revised. Speer asserts that the revision was an increase of \$60,000. The contracting officer explicitly denies having made any statement that the estimate was not current, or that it had been revised. Since there is no evidence other than these conflicting statements, the protester has not met its burden of affirmatively proving its case in this regard. SWD Associates, B-226956, July 17, 1987, 87-2 CPD ¶ 55.

Finally, we note that Speer asserts that it has obtained estimates from three nonbidding contractors which indicate that, had they bid for this contract, their prices would have ranged from approximately \$9 million to \$15 million. In our view, these gratuitous statement may not be considered to call into question the accuracy of the government estimate.

The protest is denied.

  
James F. Hinchman  
General Counsel