



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## Decision

**Matter of:** Groathouse Construction  
**File:** B-235236; B-235250  
**Date:** July 13, 1989

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### DIGEST

1. Protest against cancellation of solicitation on basis of price unreasonableness filed approximately 2 months after cancellation and within 10 days of bid opening on resolicitation is timely where protest is predicated on comparison of low bids received on original solicitation and on resolicitation.
2. Firm which submitted low bid on solicitation that was canceled because of price unreasonableness, and which did not submit bid on resolicitation, is an interested party under Bid Protest Regulations to protest potential award under resolicitation because, if the protest were sustained, the remedy would be award to firm under the original solicitation, if otherwise appropriate.
3. Contracting officer's decision to cancel invitation for bids (IFB) based on unreasonableness of bid prices was proper where low bid exceeded government estimate by 22 percent and there is no showing that the decision to cancel was based on bad faith or fraud on the part of contracting officials. Furthermore, cancellation of IFB after bid opening does not result in impermissible auction under resolicitation where IFB was canceled due to unreasonable prices.
4. Contracting officer acted properly in publicly opening all bids received under invitation for bids.

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### DECISION

Groathouse Construction protests the United States Army Corps of Engineers' cancellation of invitation for bids (IFB) No. DACA21-89-B-0102 (IFB-0102) for construction of an academic facility and associated site work at Fort Bragg,

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North Carolina, and the potential award to Caddell Construction Co., Inc., under IFB No. DACA21-89-B-0137 (IFB-0137), a resolicitation of the project. Groathouse, the low bidder under IFB-0102, objects to the Corps' determination that its price under that solicitation was unreasonably high and to any award under IFB-0137 because, in the protester's view, the slightly lower prices received under IFB-0137 show that the original decision to cancel the solicitation was merely an improper attempt at achieving lower prices through an auction.

We deny the protest.

IFB-0102 was issued on December 14, 1988, as a small business set-aside. Six bids were received, and at bid opening on January 18, 1989, Groathouse submitted the low bid of \$13,050,000. The government estimate for the project was \$10,722,596, and according to the Corps it had available funds of \$11,372,591 for the project. Since Groathouse's low bid exceeded the government estimate by 22 percent, and the available funds for the project by 14 percent, the contracting officer determined that the bid was unreasonably high and canceled the solicitation. The contracting officer informed Groathouse by letter dated February 13 that the solicitation had been canceled, and that the project would be readvertised in the future.

The Corps issued IFB-0137 on March 9, on an unrestricted basis for substantially the same work as contained in the original solicitation. The solicitation was later amended to add high temperature water lines which the agency estimates at \$250,000. The government estimate for the new solicitation had been revised upward by 5 percent, to \$11,346,648, because the agency found that some aspects of the overhead had been undervalued in the former solicitation estimate. The new water lines were not included in the revised estimate.

Five bids were received by bid opening on April 12. Caddell Construction was the apparent low bidder with a price of \$12,198,000. This figure exceeds the revised government estimate by 8 percent, and is 7 percent below the bid submitted by Groathouse on the original solicitation. The protester did not bid on the resolicitation.

Groathouse filed its protest with this Office on April 14, contending, based on Caddell's price, that the cancellation of the original solicitation on the basis of price unreasonableness resulted in an impermissible auction on the resolicitation. The protester argues that Caddell's price under the resolicitation is not significantly different than

Groathouse's bid under the original solicitation. Additionally, the protester argues that the Corps unnecessarily disclosed its bid price under the original solicitation.

As a preliminary matter, we must consider the Corps' assertion that Groathouse's protest of the original solicitation's cancellation is untimely, and that Groathouse is not an interested party to protest the potential award under the resolicitation.

Our Bid Protest Regulations require that protests shall be filed not later than 10 working days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1988). The agency argues that because Groathouse is in essence protesting the cancellation of the original solicitation, the protest should have been filed within 10 days of the cancellation in order to be timely. While protests concerning the cancellation of solicitations generally should be filed within 10 days of notice of the event, the protest basis here essentially is that award under the protested solicitation would not be proper since the low bid thereunder indicates that cancellation of the initial solicitation for price unreasonableness was improper. Because Groathouse's position is essentially based on the amount of Caddell's bid, Groathouse became aware of its basis of protest on April 12, when bids on IFB-0137 were opened. As Groathouse filed its protest within 10 days of that date, we find the protest timely.

The Corps also claims that to the extent the protest concerns the award under the resolicitation it should be dismissed because Groathouse is not an "interested party" under our Regulations, 4 C.F.R. §§ 21.0(a)-.1(a), because that firm did not bid on the second solicitation.

The question of whether a party is interested depends on the nature of the issues being protested. Free State Reporting, Inc., et al., B-225531 et al., Jan. 13, 1987, 87-1 CPD ¶ 54. If Groathouse were protesting an award under the second solicitation to a particular firm, and if other firms would remain eligible for award under the solicitation, then Groathouse would not be an interested party. Id. However, Groathouse is contending that no award should be made under the current solicitation, because the original solicitation, on which Groathouse was the apparent low bidder, was improperly canceled. If we sustain the protest, the remedy would be termination of IFB-0137, with award under the original solicitation to Groathouse as the apparent low bidder, if otherwise appropriate. We therefore find that

under these circumstances, Groathouse is an interested party eligible to challenge an award under the second solicitation.

As far as the merits of the protest are concerned, we do not agree with Groathouse's contention that the cancellation of the original solicitation was improper. An IFB may be canceled after bid opening if the prices of all otherwise acceptable bids are unreasonable. Federal Acquisition Regulation (FAR) § 14.404-1(c)(6). The determination that prices are unreasonable is a matter of administrative discretion which must be made in good faith and have a reasonable basis. Metric Constructors, Inc., et al., B-229947, Mar. 25, 1988, 88-1 CPD ¶ 311. An unreasonable price determination may be based on a comparison of the bid price with the government estimate. Id. We have found cancellation based on price unreasonableness to be justified where the low responsive bid exceeded the government estimate by less than 10 percent. See Building Maintenance Specialists, Inc., B-186441, Sept. 10, 1976, 76-2 CPD ¶ 233. Since the low bid submitted by Groathouse under the original solicitation was 22 percent higher than the government estimate, and there is no evidence of fraud or bad faith, we think the record shows that at the time it was made the contracting officer's decision to cancel the solicitation was proper. Merit Constructors, Inc., et al., B-229947 et al., supra.

Groathouse nevertheless argues that the determination that its bid price was unreasonable was the result of bad faith on the part of the agency. The protester argues that had the government estimate for the project been raised to its current level prior to the cancellation of the original solicitation, it would not have been canceled because of price unreasonableness, and the Corps would have had to make award to Groathouse. In this regard, the protester states that Caddell's only slightly lower priced bid under the resolicitation proves its case. We disagree. If the government estimate had been revised prior to the cancellation of the original solicitation, Groathouse's bid price would have been approximately 15 percent higher 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. We note further that although it was not reflected in the estimate under IFB-0137, that solicitation was amended to include an additional \$250,000 worth of water line work. Since the Caddell price was within 8 percent of the estimate, which

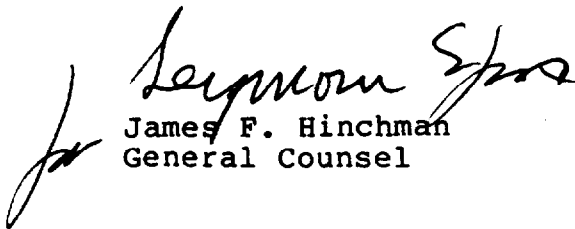
did not contain the additional work, we do not agree that its acceptance shows that the cancellation was the result of bad faith. Speer Constr. Co., Inc., B-228339.2, Feb. 10, 1988, 88-1 CPD ¶ 131.

We also disagree with Groathouse's position that the contracting officer acted improperly by exposing its bid under the original solicitation. The contracting officer was required to publicly open all bids received. FAR § 14.402-1(a). Additionally, once opened, interested parties are permitted to examine the bids submitted. FAR § 14.402-1(c). The contracting officer clearly acted properly at the bid opening.

Groathouse further argues that the cancellation of the original solicitation after bid opening and the resultant disclosure of its bid price created an impermissible auction on resolicitation. As noted previously, the regulations specifically authorize cancellation after bid opening where prices are found to be unreasonable. FAR § 14.404-1(c)(6). Here, while it is possible that in preparing its bid Caddell considered Groathouse's price under the original solicitation, there is no indication that the contracting officer canceled the solicitation for the purpose of creating an auction. Additionally, 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 Groathouse, another opportunity to bid at a reasonable price. A.T.F. Constr. Co., Inc., B-228060 et al., Oct. 30, 1987, 87-2 CPD ¶ 436.

Groathouse finally argues that it should be reimbursed for its protest and bid preparation costs. Since we have found the cancellation proper, Groathouse's claim for reimbursement of its costs is denied. 4 C.F.R. § 21.6(d), (e); Cantu Servs., Inc., B-219998.9 et al., Mar. 27, 1989, 89-1 CPD ¶ 306.

The protest and claim are denied.

  
James F. Hinchman  
General Counsel