



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Rodriguez & Del Valle, Inc.

File: B-239224

Date: July 12, 1990

Carlos O. Souffront, Esq., McConnell Valdes Kelley Sifre Griggs & Ruiz-Suria, for the protester.
Elizabeth Nagy, U.S. Department of Justice, for the agency.
Catherine M. Evans, David Ashen, Esq., and
John M. Melody, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest that after bid opening agency increased the amount of funding available so as to permit award for both the base and additive items, thereby displacing protester's low base bid, is denied where record shows that prior to bid opening, the agency budget officer certified in writing the availability of sufficient funds to permit award for the greater amount of work.

DECISION

Rodriguez & Del Valle, Inc. protests the Federal Bureau of Prisons' award of a contract to Triangle Engineering Corp., under invitation for bids (IFB) No. IFB-100-386-9, for phase II in construction of a detention center in Guaynabo, Puerto Rico. Rodriguez alleges that the agency improperly increased the funds available for the project after bid opening in order to make award to Triangle for the base item plus three additive items, instead of awarding to Rodriguez for the basic item alone.

We deny the protest.

The solicitation requested a base bid for construction of the detention center and additive amounts for additional construction, landscaping, and elevator maintenance. With respect to the basis for award, the IFB stated:

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"The low bidder for purposes of award shall be the conforming responsible bidder offering the low aggregate amount for the first or base bid item, plus or minus . . . those additive or deductive bid items providing the most features of the work within the funds determined by the government to be available before bids are opened." (Emphasis added.)

Five bids were received by the bid opening on February 14, 1990. Although Rodriguez submitted the low base bid, award was subsequently made to Triangle on the basis of its low aggregate bid (\$38,438,000) for the base item plus the additive items, which the agency reports was within the \$41.9 million available before bid opening.

Rodriguez alleges that the agency did not have sufficient funds at the time of bid opening to make award for more than the base item; Rodriguez points out that in announcements reported in the local press prior to bid opening, the agency referred to an estimated cost of \$35 million for the contract. Rodriguez also considers it significant that the agency did not disclose at bid opening the amount of available funds.

We find no persuasive evidence that after bid opening the agency increased the amount of funds available so as to permit award to Triangle. The record includes a memorandum dated December 18, 1989 (i.e., prior to bid opening), from the budget officer to the contracting officer, certifying that "funds in the amount of \$41,900,000 are available for the [phase] II Construction Contract . . . Guaynabo, Puerto Rico." As for the contract estimates reported in the press, the agency explains that these were based upon preliminary construction estimates obtained by the agency's public affairs office at a time when a smaller facility was contemplated. Accordingly, we have no basis to object to the award. We will not find an agency's actions improper based on mere inference or conjecture. See Gulf Weather Corp., B-238332, Feb. 22, 1990, 90-1 CPD ¶ 205.

The protest is denied.


James F. Hinchman
General Counsel
fp