



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of : S.W. Day Construction Corp.

File: B-258801

Date: February 15, 1995

DECISION

S.W. Day Construction Corporation protests the award of a contract to Shirley Contracting Corporation under invitation for bids (IFB) No. N62477-94-B-0198, issued by the Department of the Navy for construction of an anti-armor tracking and live fire range at the Marine Corps Combat Development Command at Quantico, Virginia. S.W. Day contends that the Navy should cancel this IFB because all of the bids received, including S.W. Day's, exceed S.W. Day's bid under a prior canceled procurement for the same work.

We dismiss the protest.

The IFB was originally issued on June 22, 1994, as a competitive 8(a) set-aside (section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1988 and Supp. V 1993)). Three bids were opened on July 22 and S.W. Day's bid of \$3,733,215 was the lowest received. The government estimate was \$3,120,000 and the funds available for the project totaled \$3,560,000. S.W. Day's exceeded the estimate by 19.6 percent and the highest bid exceeded it by 47.2 percent. In view of the disparity in bids, the Navy determined that the competition was inadequate to establish a market price. It thus concluded that its estimate represented the market price. Since additional funds were not then available, the Navy canceled the solicitation and reissued it on an unrestricted basis on August 17.

S.W. Day and three other firms submitted bids by the September 16 bid opening date. Shirley submitted the low bid of \$3,786,500, while S.W. Day submitted the third low bid at \$4,079,000. The government estimate and level of funding were the same. Since the disparity in bids was smaller, the contracting officer determined that there was adequate price competition to establish a fair market price higher than the government estimate. Due to the nearness of the end of the fiscal year, the Navy also was able to apply additional funds to perform the project. The Navy awarded Shirley the contract on September 27. Upon learning of the award, S.W. Day filed this protest.

S.W. Day explains that it is not protesting that the agency's original estimate was inaccurate or the propriety of the agency's cancellation of the first IFB. Rather, S.W. Day contends that, upon finding that the bids submitted for the second IFB were "drastically higher than those received in the original solicitation," the agency should have canceled the current IFB and awarded the contract to S.W. Day as the low bidder on the original IFB.¹ According to the protester, the failure to cancel the second solicitation was an abuse of discretion and constituted bad faith.

The protester has failed to state a valid basis for protest. The jurisdiction of our Office is established by the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556 (1988). Our role in resolving bid protests is to ensure that the statutory requirements for full and open competition are met. Brown Assocs. Management Servs., Inc.-Recon., B-235906.3, Mar. 16, 1990, 90-1 CPD ¶ 299. To achieve this end, our Bid Protest Regulations require that a protest state grounds which are legally sufficient. 4 C.F.R. § 21.1(e) (1984). These requirements contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. Robert Wall Edge-Recon., 68 Comp. Gen. 352 (1989), 89-1 CPD ¶ 335.

Here, there is no evidence that the agency's decision to cancel the first IFB was incorrect; the bids all exceeded the government estimate by more than 19 percent, and no additional funding was then available. See Hawkins Builders, Inc., B-237680, Feb. 5, 1990, 90-1 CPD ¶ 154. By stating that it does not challenge the original cancellation, S.W. Day essentially concedes that the agency's decision was reasonable.


Further, there is nothing improper in the agency's determination that the second competition produced adequate price competition to establish a market price higher than the government estimate. Nor is there any impropriety in its location of additional funds to allow an award above the original funding level. While S.W. Day alleges bad faith and an abuse of discretion, procurement authorities are presumed to act in good faith and, in order for our Office to conclude otherwise, the record must show that procuring officials intended to injure the protester. Cycad Corp., B-255870, Apr. 12, 1994, 94-1 CPD ¶ 253. There is no evidence of such an intent here, and S.W. Day's inference of bad faith is insufficient to state a basis for protest, let alone prove its case. *Id.*

Finally, in our view, having submitted a bid more than \$300,000 higher than its previous bid, and higher than two of the bidders under this IFB, S.W. Day lacks the

¹The protester's characterization of the bids received under the second IFB is inaccurate since, although Shirley's bid was higher than S.W. Day's original bid, all bids received were lower than the remaining bids submitted under the original IFB.

requisite economic interest to pursue this protest, 4 C.F.R. § 21.0(a). The protester's election—for whatever reason(s)—not to duplicate its original bid in a subsequent procurement does not give rise to a basis for protest. The protester is simply not an interested party to object to the agency's award of the contract to Shirley as the low responsible bidder.

The protest is dismissed.

A handwritten signature in cursive script that reads "Paul Lieberman".

Paul Lieberman
Assistant General Counsel