



Comptroller General  
of the United States

Washington, D.C. 20548

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## Decision

**Matter of:** D.H. Kim Enterprises, Inc.

**File:** B-261103

**Date:** July 7, 1995

Adam C. Harrison, Esq., for the protester.  
Terrence J. Tychan, Department of Health & Human Services,  
for the agency.  
John L. Formica, Esq., and James A. Spangenberg, Esq.,  
Office of the General Counsel, GAO, participated in the  
preparation of the decision.

### DIGEST

Protester's claim for bid preparation costs is denied where the agency properly canceled solicitation after bid opening because all bids received exceeded funds available for the project, and there is no evidence that the agency acted in bad faith in preparing its independent government estimate for the project or proceeding to bid opening when it had secured funds in accordance with its estimate for only the solicitation's base item.

### DECISION

D.H. Kim Enterprises, Inc. protests the cancellation of invitation for bids (IFB) No. 263-94-B(CH)-0454, issued by the Department of Health & Human Services, for the repair and improvement of a National Institutes of Health building in Bethesda, Maryland. In the alternative, the protester requests recovery of its bid preparation and protest costs.

We deny the protest and the claim for costs.

The IFB requested prices for a base and two option items. The solicitation cautioned potential bidders that although the low bidder for the purposes of award would be the bidder offering the low aggregate price for the base item and the two options, award would be made on the base bid and those evaluated options for which funds were available at the time of award.

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The bids received, and the agency's independent government estimate (IGE), were as follows:

	<u>Base Item</u>	<u>Option 1</u>	<u>Option 2</u>	<u>Total</u>
Restoration East	\$6,288,680	\$100	\$100	\$6,288,880
B.N. Construction	\$6,747,021	\$575,814	\$832,165	\$8,155,000
D.H. Kim	\$4,200,000	\$2,900,000	\$3,250,000	\$10,350,000
Dustin Construction	\$4,694,000	\$3,790,000	\$4,493,000	\$12,977,000
IGE	\$3,406,000	\$2,753,000	\$3,116,000	\$9,275,000

The agency reviewed the bids received, and found that the two low bids appeared to be unbalanced and therefore nonresponsive, and that D.H. Kim appeared to have submitted the low, responsive bid. Notwithstanding this determination, the project was only funded for \$3.4 million, that is, it had been funded in accordance with the IGE for the base item only. Thus, the agency canceled the solicitation because all bids received exceeded the funds available for the base item.

D.H. Kim initially protested to our Office that the cancellation of the solicitation was improper, and, in the alternative, requested that it be reimbursed for the costs incurred in preparing its bid as well as the costs of pursuing its protest. The protester now concedes the propriety of the cancellation, but argues that it is entitled to its bid preparation costs and the costs incurred in pursuit of this protest because the agency "acted in bad faith and withheld material information from its bidders" when it proceeded with bid opening, even though "it was fully aware [that] there were inadequate funds to finance the project." In support of this argument, the protester points out that the agency had secured funding in accordance with the IGE for only the IFB's base item, and that the IGE was prepared more than 1 year prior to bid opening.

The protester's argument is without merit. The IFB put bidders on notice that award would be made only for those items for which funding had been secured, and in fact the agency had secured funding for the base item in accordance with the IGE. To the extent the protester is contending that the agency improperly proceeded with the procurement knowing that it lacked adequate funding, such negligence or lack of diligence does not establish bad faith and by itself provides no basis to allow recovery of bid preparation

costs. In sum, there is no evidence that the agency issued the IFB or otherwise acted in bad faith so as to justify the recovery of bid preparation costs. Hac Corp., B-235136, July 20, 1989, 89-2 CPD ¶ 68.

D.H. Kim also requests reimbursement of its protest costs. Since we deny the protest and the claim for costs, there is no basis to award protest costs. See 4 C.F.R. § 21.6(d) (1995).

The protest and claim are denied.

*Christine S. Melody*  
for Robert P. Murphy  
General Counsel