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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: Cattlemen's Meat Company

File: B-296616

Date: August 30, 2005

Joseph Dirik, Esq., Jenkins & Gilchrist, for the protester.
Clarence D. Long, III, Esq., Department of the Air Force, for the agency.
Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General
Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of agency's cancellation of solicitation for food services to instead perform the services in-house is denied where the protester's price submitted in response to the solicitation significantly exceeded the government estimate, which has not been shown to be other than realistic and fair.

DECISION

Cattlemen's Meat Company protests the Department of the Air Force's decision to perform food services for the Air Force Reserve Officer Training Corps (AFROTC) in-house rather than award a contract to Cattlemen's under request for proposals (RFP) No. FA4690-05-R-0021.

We deny the protest.

This protest concerns the acquisition of food services for two units of AFROTC cadets at Ellsworth Air Force Base (AFB), South Dakota. For the previous 2 years, the requirement for food services to accommodate congressionally-mandated field training of AFROTC cadets held at Ellsworth AFB each summer had been provided in-house by the Air Force's 28th SVS (Services) Squadron at the base's Bandit Dining Facility, or alternatively, in an "overflow situation," at the base's officer's club, the Dakota's, a nonappropriated fund instrumentality (NAFI).

In 2005, the Air Force required food services for three encampments of AFROTC cadets, with the first encampment scheduled for May 19, the second scheduled for June 22, and the third scheduled for July 28. To satisfy the requirement, the Air

Force decided to contract with the Dakota's. On March 15, the Air Force published a notice of intent to award a food services contract on a sole-source basis to the Dakota's on the FedBizOpps (Federal Business Opportunities) Internet site. Cattlemen's protested the Air Force's decision to award a contract on a sole-source basis to the Dakota's rather than compete the requirement with commercial sources. To settle the protest, the Air Force agreed to conduct a competitive procurement for the second and third encampments, and provide Cattlemen's with the opportunity to compete for the requirement.

As a result, on May 25, this RFP was issued for the two remaining encampments in 2005 as a commercial item acquisition pursuant to Federal Acquisition Regulation Part 12. In addition to requiring the contractor to provide a facility, equipment, personnel, supervision, and other items, and services necessary to provide the meals, and to meet certain quality assurance standards, the RFP's statement of work required that the "Contractor shall provide a hardened facility to provide an eating area for the Cadets." RFP, Statement of Work, at 7. The stated basis for award under the RFP was price.

Since Cattlemen's was the only respondent to the FedBizOpps notice, and because the requirement was imminent, the Air Force only solicited Cattlemen's to submit a proposal in response to the RFP.¹ On June 7, Cattlemen's submitted a proposal to provide food services, at a cost of \$571,638.60. The government estimate was \$375,829.50, which represented a per-meal cost of \$13.25 per day for meals served in the dining facility and \$6 per day for MREs (meals ready to eat) served in the field plus \$35,500 for a "hardened" facility. Because the protester's proposal price substantially exceeded the government estimate and available funding, the Air Force decided to again obtain AFROTC food services in-house from the 28th SVS squadron, rather than contracting commercially or with the Dakota's. The RFP was canceled and the AFROTC entered into a memorandum of agreement (MOA) with the 28th SVS Squadron to provide these services at the same rate contained in the government estimate of \$13.25 per person per day for serving in the facility and \$6 per day for MREs. This protest from Cattlemen's followed.

¹ While Cattlemen's asserts that the agency was obligated to make further efforts to obtain competition among commercial vendors, the fact is that Cattlemen's was provided an opportunity to and did submit a proposal in response to the RFP. Given this opportunity, we find that Cattlemen's is not an interested party eligible to protest the agency's failure to solicit additional commercial sources for this requirement. In order for a protest to be considered by our Office, a protester must be an interested party, which means it must have a direct economic interest in the resolution of a protest issue. Bid Protest Regulations, 4 C.F.R. § 21.0(a) (2005). This protest basis is essentially on behalf of other potential offerors that were not solicited, so that Cattlemen's lacks the requisite interest to advance the issue in this case. The Real Estate Ctr., B-271081.4, Feb. 24, 1997, 97-1 CPD ¶ 85 at 3.

Cattlemen's challenges the Air Force's determination to obtain AFROTC meals in-house, asserting that the Air Force improperly evaluated its price against a flawed estimate of the government's costs. In this regard, Cattlemen's contends that it was required to meet certain requirements, such as the requirement for a hardened facility, electrical upgrades, quality assurance and training, that increased the costs of its proposal, but the same requirements were not included in the MOA between the AFROTC and the 28th SVS Squadron. Cattlemen's maintains that these were unnecessary requirements that ensured that the Air Force would receive a higher price than the in-house estimate.

In a negotiated procurement the agency has broad authority to decide whether to cancel the solicitation; there need be only a reasonable basis for the cancellation. VSE Corp., B-290452.2, Apr. 11, 2005, 2005 CPD ¶ 111 at 6. However, where a solicitation issued by a Department of Defense activity is cancelled in order to obtain the solicited services in-house, the provisions contained in 10 U.S.C. § 2462(a) (2000) become relevant. Pemco Aeroplex, Inc., Aero Corp., B-275587.9 et al., June 29, 1998, 98-2 CPD ¶ 17 at 7-11. Under that statute, agencies in the Department of Defense are required to acquire goods or services from a private-sector source if the private-sector source can provide the requirement at a cost lower than the government can perform the service in-house. 10 U.S.C. § 2462(a). The statute also provides that in order to determine whether to contract with a private-sector source based on a comparison of costs, the agency must ensure that all costs considered (including the costs of quality assurance, technical monitoring of the performance of such function, liability insurance, employee retirement and disability benefits, and all other overhead costs) are realistic and fair. 10 U.S.C. § 2462(b). Where an agency's cancellation of an RFP is inconsistent with 10 U.S.C. § 2462, there can be no reasonable basis for the cancellation. Pemco Aeroplex, Inc., Aero Corp., supra, at 7.

Here, the Air Force compared the protester's price to a government estimate of the costs incurred to provide AFROTC meals in-house, which estimate the Air Force reports was developed based on the government's experience providing meals for the 2004 encampments and the first encampment in 2005. Eighty-eight percent of the costs of meals represented expenses, which included 31 percent for the costs of goods sold, 29 percent for labor, 6 percent for supplies (paper products, linens, plastic gloves, dishwashing soap) and 22 percent for other operating/depreciation expenses (utilities, rug runner rentals, equipment replacement). This resulted in an estimated cost of \$13.25 per meal and \$6.00 per MRE, which when multiplied by the estimated meals to be served during the encampments and by then adding in the costs of a "hardened" facility totaled \$375,829.50. Contracting Officer's Statement at 3.

Cattlemen's does not specifically assert that the government estimate was inconsistent with 10 U.S.C. § 2462, nor does it challenge the validity of any of the costs contained in the government estimate as understated. Instead, its protest focuses on the MOA between the Air Force and the 28th SVS Squadron, which did not

specifically contain the requirement to provide a hardened facility or the quality assurance and training requirements, and asserts that this shows that the comparison of its proposal to the government estimate was unequal and improper.

The Air Force indicates here, however, that an MOA, which is an internal Air Force document, would not necessarily state every requirement stated in the RFP's statement of work. In this regard, the Air Force advises that the Bandit Dining Facility where the 28th SVS Squadron serves the meals is a hardened facility, and that the Squadron is required to observe the Air Force's own training and quality assurance requirements that are consistent with the RFP's Statement of Work requirements. As noted above, the estimate for the hardened facility is expressly included in the government estimate. Moreover, Cattlemen's has not rebutted the agency's explanation or shown that any incremental quality assurance and training costs are not included in the government estimate. In addition, the Air Force indicates that the requirement that a private-sector contractor provide its own hardened facility, including electrical capacity, was necessary because the Bandit Dining Facility is a military facility currently in use for other operations, such that a contractor cannot use them to satisfy these RFP requirements, and because the safety factors related to wind velocity exceeding 60 miles per hour, with gusts between 80 and 90 miles per hour, in South Dakota require a hardened facility. Supplemental Agency Report at 1-2.

Thus, the protester's reference to the omitted requirements in the MOA does not demonstrate that the government estimate was other than realistic and fair, or that the comparison of the estimate with the protester's proposal was unequal or improper. In addition, we note that Cattlemen's has not questioned any of the specific elements in the government estimate as understated, and on this record we have no basis to find that the estimate was other than realistic and fair. Under the circumstances, we believe the agency reasonably determined that the protester's proposed price, as compared to the government estimate, was excessive, and that the agency therefore had a reasonable basis to cancel the RFP in order to obtain the services in-house.

The protest is denied.

Anthony H. Gamboa
General Counsel