



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Howard W. Pence, Inc.

File: B-277735.2

Date: November 21, 1997

Lawrence W. Luecking for the protester.

Robert W. Pessolano, Esq., Department of the Army, for the agency.

Christine F. Davis, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly canceled a solicitation after bid opening based upon the unreasonableness of the bid prices, where the bid in line for award exceeded the government estimate by 43 percent and there is no showing that the government estimate was in error or that the decision to cancel was made in bad faith.

DECISION

Howard W. Pence, Inc. protests the cancellation of invitation for bids (IFB) No. DACA27-97-B-0025, issued by the United States Army Corps of Engineers, Louisville District, for renovation of barracks at Fort Campbell, Kentucky.

We deny the protest.

The IFB provided for the award of an indefinite delivery, indefinite quantity contract for renovation of up to seven barracks buildings, *i.e.*, two buildings each in the base and first option year, and three buildings in the second option year. The contractor will demolish existing, interior partitions and install new ones; upgrade the electrical and heating, ventilation and air conditioning systems; renovate mini-kitchens; replace windows, doors, and roof; and repair, clean, and seal the building's exterior facade. The IFB bidding schedule requested unit and extended prices for 57 contract line items (CLIN), which covered the various work requirements for the buildings to be renovated in the base and option years.

The agency received five bids on the July 29, 1997, bid opening. A comparison of the bids and the government estimate for the required work, including options, follows:

Bidder A	\$14,454,016
Pence	\$27,809,919
Bidder C	\$28,735,460

Bidder D	\$35,008,666
Bidder E	\$55,164,000
Government Estimate	\$19,474,209

The apparent low bid included a defective bid bond and was rejected. Because the bid prices varied widely and, except for Bidder A's rejected bid, far exceeded the government estimate, the contracting officer asked the Corps' Cost Engineering Branch to review the accuracy of the government estimate.

An architect/engineering firm prepared the government estimate for each CLIN on the IFB bidding schedule; the firm also generated back-up documentation showing how it arrived at the unit and extended CLIN prices. Before the IFB was issued, the Cost Engineering Branch verified that the estimate was supported by standard estimating procedures, was generated from standard cost engineering software, was based upon all cost elements of the required work, and was reasonable. At the contracting officer's request after bid opening, the Branch checked for any errors or omissions in the estimate and found none. Also, the Branch asked four bidders, including Pence, whether there were any problems in the IFB specifications that may have contributed to the wide variance in the bids; none of the bidders identified any solicitation defects. Finally, the Branch obtained statistical information showing that the average bid price in similar procurements was within a very narrow range of the government estimate. The Branch confirmed the estimate's accuracy.

The contracting officer concluded that the prices of all the otherwise acceptable bids, including Pence's, were unreasonably high and canceled the IFB. This protest followed.

An IFB may be canceled after bid opening if the prices of all otherwise acceptable bids are unreasonable. Federal Acquisition Regulation § 14.404-1(c)(6). The determination that prices are unreasonable is a matter of administrative discretion, which we will not disturb unless the determination is unsupported or there is a showing of fraud or bad faith on the part of contracting officials. G. Marine Diesel Corp., B-238703, B-238704, May 31, 1990, 90-1 CPD ¶ 515 at 3. A determination that a price is unreasonable may be based upon a comparison with the government estimate. Hawkins Builders, Inc., B-237680, Feb. 5, 1990, 90-1 CPD ¶ 154 at 2. Here, Pence's apparent next-low bid was 43 percent higher than the government estimate. Cancellation has been found to be justified where the low responsive bid exceeded the government estimate by 10 percent. See Metric Constructors, Inc.; H.B. Zachry Co., B-229947, B-229947.2, Mar. 25, 1988, 88-1 CPD ¶ 311 at 2-3.

Pence argues that its bid price was not unreasonably high, but that the government estimate was unreasonably low. Pence asserts that "the bare costs" to perform the contract, subtracting profit and general and administrative expenses, is \$23,527,191

and that the "required work cannot be completed for less than this amount." Pence, however, submitted no bid worksheets or other back-up data to substantiate this "bare cost" figure. Further, although Pence's copy of the agency report contained the government estimate, which disclosed the estimated unit and extended CLIN prices for each item on the IFB bidding schedule, Pence did not identify a single CLIN where the government estimate appeared to be understated. Pence instead claimed that it could not judge whether the estimate was understated, unless it obtained the back-up documentation supporting the estimate; the back-up documentation is source selection sensitive information to which Pence was not entitled, because it was not represented by counsel admitted to a protective order. See 4 C.F.R. § 21.4 (1997).

We find, contrary to the protester's allegation, that Pence had enough information to judge whether any of the estimated CLIN prices in the government estimate was understated. Because the protester failed to do so, we have no basis to question the agency's conclusion that the estimate was reasonable and that the bids received were not. See Harrison Western Corp., B-225581, May 1, 1987, 87-1 CPD ¶ 457 at 4. In addition, we reviewed in camera the back-up documentation supporting the government estimate and find that it confirms the estimate's accuracy. Specifically, the back-up documentation shows that the estimators accurately described all work to be performed, accounted for all costs associated with each item of work, localized labor and material costs to the Ft. Campbell area, and developed estimated prices for the various CLINs, which match the estimated prices on the bidding schedule.

Noting that its bid price was in line with the third and fourth low bid prices, while the government estimate was not, Pence contends that this establishes that the government estimate is unreasonable. The mere fact that the prices bid are substantially higher than the government estimate does not, in and of itself, demonstrate that the government estimate is unreasonably low. RNJ Interstate Corp., B-241946, Feb. 26, 1991, 91-1 CPD ¶ 219 at 3. Because Pence has presented no evidence (other than the bids) showing that the government estimate is unreasonable or that the agency acted in bad faith, we find that the contracting officer properly determined that the bidders' prices were unreasonable and that cancellation was justified. See J. Morris & Assocs., Inc., B-256840, July 27, 1994, 94-2 CPD ¶ 47 at 2.

The protest is denied.

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