



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Moore's Cafeteria Services, Inc.
File: B-234063.4
Date: June 29, 1989

DIGEST

The determination to cancel a competitive procurement to initiate a procurement under section 8(a) of the Small Business Act is a matter for the contracting agency and the Small Business Administration, and will not be reviewed by the General Accounting Office absent a showing of possible fraud or bad faith on the part of government officials.

DECISION

Moore's Cafeteria Services, Inc., protests the cancellation after bid opening of invitation for bids (IFB) No. F05600-89-B-0009, issued as a total small business set-aside for full food services at Lowry Air Force Base, Colorado. Moore also protests the decision not to reissue a competitive solicitation and instead to award a contract for this requirement pursuant to the Small Business Administration's (SBA's) section 8(a) program.^{1/}

We dismiss the protest.

Subsequent to bid opening under this IFB, the contracting officer determined that the stated estimates for meals to be served were overstated by 28 percent, and that award under

^{1/} Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1982 and Supp. IV 1986), authorizes the SBA to enter into contracts with any government agency with procuring authority and to arrange for the performance of such contracts by letting subcontracts to socially and economically disadvantaged small business concerns. The contracting officer is authorized "in his discretion" to let a contract to the SBA upon such terms and conditions as may be agreed upon by the procuring agency and the SBA. Exquisito Services, Inc., 65 Comp. Gen. 729 (1986), 86-2 CPD ¶ 78.

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the solicitation based on these faulty estimates would be improper. As a result of this error, the contracting officer determined cancellation to be in the government's best interest and, subsequently, that negotiation and award of a contract to a socially and economically disadvantaged firm selected by the SBA under the section 8(a) program was appropriate; the synopsis of the solicitation published in the Commerce Business Daily had cautioned bidders that award ultimately might be made under the 8(a) program.

The protester contends that the faulty estimates could have been corrected by amendment after award and that, in any case, it was unfair to convert the small business set-aside to a noncompetitive section 8(a) program set-aside.

The general rule that governs the cancellation of a solicitation after bid opening is that award must be made to the responsible bidder that submitted the lowest responsive bid, unless there is a compelling reason to reject all bids and cancel the solicitation. See Federal Acquisition Regulation (FAR). § 14.404-1(a)(1). Where estimates in a solicitation are found to be other than a reasonably accurate representation of actual anticipated requirements, such a compelling reason exists, and cancellation is required to preclude the possibility of an award that will not result in the lowest cost to the government and to provide offerors an opportunity to structure their bids based on a more realistic representation of anticipated needs. American Technical Communications, B-230827, July 15, 1988, 88-2 CPD ¶ 56.

In accordance with this standard, it appears cancellation here was warranted, based on the 28 percent overstatement of the estimate, to give bidders a chance to reformulate prices based on the significantly reduced quantities involved, and to preclude the possibility that the bids, based on the inflated estimate, might not have represented the lowest cost to the government for what was actually required.

Moreover, our Office has specifically upheld the propriety of canceling a solicitation after bid opening for the purpose of setting aside a procurement for award under the section 8(a) program. In this regard, a determination to cancel a competitive procurement to initiate a section 8(a) procurement is within the broad discretion of the contracting agency and the SBA under the applicable statute and regulations, and we will not disturb such a determination absent a showing of bad faith. Exquisito Services, Inc., 65 Comp. Gen. 729, supra; Bucky X-Ray Int'l Corp., B-231353, July 25, 1988, 88-2 CPD ¶ 79. Here, there is no allegation of bad faith.

Moore's complains that the award of the 8(a) contract will be at a higher price than would have resulted from competitive bidding. It is not clear that this will be the case here but, in any case, a higher price properly may be paid to a contractor under a section 8(a) contract in order to further the socioeconomic goals of the 8(a) program. See Exquisito Services, Inc., 65 Comp. Gen. 729, supra.

The protest is dismissed.



Ronald Berger
Associate General Counsel