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Carter

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-201981

DATE: July 15, 1981

MATTER OF: Premier Electrical Construction Company

DIGEST:

Cancellation of solicitation after opening of bids is proper where purchasing agent for city of Chicago under federally funded procurement could reasonably determine bid prices to be unreasonably high because all bids conforming to invitation exceeded city's cost estimate.

Premier Electrical Construction Company (Premier) has filed a complaint with our Office against the cancellation and reissuance by the city of Chicago of an invitation for bids (IFB) for a partially federally funded construction project. We find the complaint to be without merit.

In December 1980, the city of Chicago issued the IFB in question for the installation of substation equipment at the O'Hare International Airport Extension mass transportation facility. The contract was to be 80 percent funded by the Urban Mass Transit Administration (UMTA). Through administrative error, the city's purchasing department inadvertently failed to send a material revision to the specifications to several of the companies which had obtained the IFB. Three of the nine bidders, including the company submitting the lowest bid, failed to acknowledge receipt of this addendum in their bids. Premier was the second lowest bidder.

The city's purchasing agent determined that it would be in the best interests of the city to cancel the IFB and resolicit because the city failed to mail a material addendum to all of the known potential bidders and all of the bids other than the lowest bid exceeded the city's cost estimate. Premier contends that it should have been awarded the contract as the

[Protest of IFB Cancellation and Reissuance]

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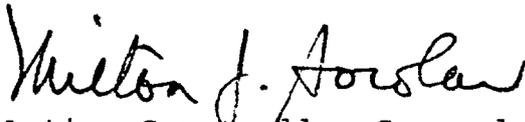
low responsive bidder under the initial solicitation and that the cancellation of the solicitation violates the Federal Procurement Regulations (FPR). UMTA argues that the FPR does not apply to the city's procurement and that the city's actions were proper under the less stringent requirements of its grant to the city.

We see no need to decide whether the FPR applies to this procurement since, even if we apply the FPR's more demanding requirement for a "compelling reason" to cancel a solicitation after bid opening (see 41 C.F.R. § 1-2.404-1 (1980)), we find the city's actions to be proper. Stated simply--all of the bids conforming to the invitation exceeded the city's cost estimate. No party has alleged that the city's estimate is unreasonable. In these circumstances, the purchasing agent could reasonably determine that the bids were unreasonably high. See The Holloway Company, B-197557, August 18, 1980, 80-2 CPD 128. We believe this to be the intent of the agent's justification for the cancellation. Unreasonable prices are specifically cited in the FPR as a justification for cancellation. 41 C.F.R. § 1-2.404-2(c) (1980). We will sustain a determination of price unreasonableness barring bad faith or fraud, neither of which is alleged here. See Gretchen's Keyponch Inc., B-196496, June 17, 1980, 80-1 CPD 420.

Premier's related contention that the city has violated Federal regulations by attempting to award the contract while this protest was pending without notifying the cognizant Federal agencies is also without merit. We know of no such regulation applicable to grant procurements and Premier has identified none. In any event, even if the city were required to withhold award while the protest is pending, the failure to do so would be a procedural error not affecting the legality of the award. See SAI Comsystems Corporation, B-196163, February 6, 1980, 80-1 CPD 100.

We find no basis in the record before us to question the city's actions.

The protest is denied.


Acting Comptroller General
of the United States