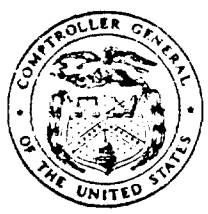


24558

DECISION



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

FILE: B-208272

DATE: March 22, 1983

MATTER OF: Photo Data, Inc.

DIGEST:

1. Contracting agency's cancellation of advertised solicitation because the only bid received was determined to be unreasonable as to price is not subject to objection where bid was substantially higher than both the Government estimate and the unit prices bid for similar work and the record discloses no bad faith or fraud on part of the contracting agency in making its determination.

2. Because the Government Printing Office is a legislative agency, its determination to perform printing work in-house is not governed by OMB Circular A-76 policies applicable to executive agencies. Further, because 44 U.S.C. § 501 authorizes GPO to perform printing work for executive agencies, GPO undertakes the work under its own authority and not as an agent for an executive agency.

Photo Data, Inc., protests the Government Printing Office's decision to cancel solicitation Jacket No. 372-790 and to print in-house an update of the State Department's Biographic Register. Because we believe that GPO had a reasonable basis for concluding that Photo Data's bid, the only bid received, was excessive, we conclude that the cancellation was not improper.

GPO first issued this solicitation in May 1982, seeking a contractor to update the Biographic Register. Because of the limited time allowed for completion of the work, Photo Data did not bid, even though it had produced

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the first Biographic Register and all subsequent updates. The two firms that did submit bids, Harper Graphics, Inc. and Sogitec, Inc., for \$27,214.11 and \$29,302.61 respectively, were rejected because they lacked the required security clearances.

GPO reissued the solicitation and on the amended bid opening date of June 23 received one bid, Photo Data's, totaling \$104,601.88 for the estimated quantity of work at its unit prices. The contracting officer compared Photo Data's bid price with GPO's \$50,590.24 estimate for doing the work in-house and the prices GPO had obtained for similar work under other solicitations. On this basis, the contracting officer determined that Photo Data's bid was excessive as to price, canceled the solicitation, and recommended performance by GPO. This recommendation was accepted and GPO has completed the work within its cost estimate.

Photo Data questions the validity of the contracting officer's determination that its price was excessive, pointing out that this same work would have cost an estimated \$402,759.06 under Photo Data's multiple-award 280-M contract with GPO. Photo Data contends that it was not reasonable for GPO to compare Photo Data's bid with the prices bid on the original solicitation because those prices did not take into account the additional cost of complying with security restrictions. Photo Data also asserts that the contracting officer's determination to cancel the solicitation was made in bad faith, alleging certain inconsistencies between what Photo Data's representatives were told and what was said to the State Department.

Photo Data also contends that any decision to perform this work in-house rather than by resolicitation should have complied with procedures set forth in Office of Management and Budget Circular A-76. Further, Photo Data argues that based upon its knowledge of the Biographic Register, the specification overstated the number of corrections needed on each page and that it would have been willing to negotiate a much lower price, in the range of \$50,000, for the work actually required. Finally, Photo Data contends that GPO will not be able to satisfy the State Department's technical requirements and that the preparation of a complete new Biographic Register will require reproofing by State Department employees.

As a general rule, cancellation of an advertised solicitation after bid opening is improper absent a cogent and compelling reason. However, excessive prices are a compelling reason and the solicitation may be canceled after opening if all otherwise acceptable bids are unreasonable. General Communications and Electronics, Inc., B-201630, April 15, 1981, 81-1 CPD 289; Federal Procurement Regulations (FPR) § 1-2.401-1(b)(5). In this connection, we have stated that a contracting officer's determination as to unreasonableness of prices will be sustained barring bad faith or fraud. Penn Landscape & Cement Work, B-196352, February 12, 1980, 80-1 CPD 126; Gretchen's Key punch Inc., B-196496, June 17, 1980, 80-1 CPD 420. Further, in reviewing a contracting officer's exercise of discretion in this area, we have recognized the inexact nature of Government estimates. Lashcon, Inc., B-201833, June 9, 1981, 81-1 CPD 469.

In this case, the contracting officer found that Photo Data's bid was more than twice the Government's estimate for in-house performance, three times the bids received on the original solicitation, and well in excess of the unit prices obtained for other comparable work. In view of the significant disparity between Photo Data's total bid price and the cost of doing comparable work elsewhere (as well as GPO's in-house estimate) we believe that the contracting officer had a reasonable basis for considering Photo Data's price excessive. In this regard, Photo Data has not offered any evidence that the added cost of complying with security requirements would in any way make up this substantial difference in price.

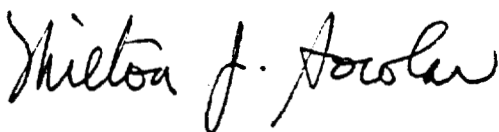
We do not agree that the significantly higher unit prices in GPO's contract with Photo Data under the 280-M program demonstrate the reasonableness of Photo Data's present bid price. GPO explains that while Photo Data has received a basic award under the 280-M program, individual job orders are issued subsequently to the contractor with the lowest prices for that particular job. GPO advises that it is therefore highly unlikely that Photo Data will ever receive an order for the categories of work in question here. Moreover, Photo Data's own calculations show that two of the 280-M program awardees could have performed the work at a cost well below the Government's estimate.

As to Photo Data's allegation of bad faith on the part of GPO, the record must show that the agency had a malicious and specific intent to injure the party alleging bad faith. Bradford National Corporation, B-194789, March 10, 1980, 80-1 CPD 183. Prior procurement practices, inefficiency or negligence does not suffice to meet the high standard of proof required to show bad faith. Arlandria Construction Co., Inc.--Reconsideration, B-195044; B-195510, July 9, 1980, 80-2 CPD 21. Moreover, we will not find a discretionary determination to be arbitrary, capricious or biased if the record indicates a reasonable basis for such determination. Decision Sciences Corporation, B-183773, September 21, 1976, 76-2 CPD 260. Thus, even if animosity by the contracting officer is assumed, it must be shown that it was translated into action for which there was no reasonable basis and which was prejudicial to the protester. Boone, Young & Associates, Inc., B-199540.3, November 16, 1982, 82-2 CPD 443. Neither Photo Data's unsubstantiated allegation that the contract negotiator made inconsistent statements nor the fact that GPO did not elect to institute negotiations with the only bidder, Photo Data, satisfy this substantial burden of proof.

With respect to Photo Data's contention regarding non-compliance with OMB Circular A-76, we point out that while OMB Circular A-76 establishes policies for executive agencies, GPO is not affected by the Circular because it is a legislative agency. Further, because 44 U.S.C. § 501 directs GPO to perform printing work for the executive agencies, GPO undertakes such work under its own authority and not as an agent for the executive agency in question. Accordingly, the policies of the Circular do not apply to GPO.

Any question that Photo Data may have had regarding the estimated number of corrections required per page concerned the adequacy on the specification and should have been raised prior to submission of bids in order to be timely. GAO Bid Protest Procedures, 4 C.F.R. § 21.2(b) (1). Finally, with respect to GPO's ability to perform the work in-house, GPO advises that its equipment will produce printing work comparable to that solicited and that no additional proofreading will be required.

The protest is denied.

for 
Comptroller General
of the United States