

DECISION



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

10,625

FILE: B-193818

DATE: June 29, 1979

MATTER OF: Mil-Spec Corporation; Fryer-Knowles,
Inc.

DIGEST:

1. Ground of protest questioning agency finding that concern is responsible will not be considered because GAO no longer reviews responsibility findings, in absence of certain exceptions not applicable here.
2. Based on review of record, ~~GAO cannot~~ question procuring activity's decisions to permit withdrawal of erroneous bid and to cancel part of IFB because of receipt of unreasonable prices.

Mil-Spec Corporation (MSC) and Fryer-Knowles, Inc. (FKI), have protested the award of a contract by the Naval Supply Center, San Diego, California, to American Marine Decking Systems, Inc. (AMDS), for the renewal of shipboard deck coverings under lots 2, 3, and 4 of invitation for bids (IFB) NOO244-78-B-T002. The companies also protest the cancellation of lot 1 of the IFB.

The companies' grounds of protest may be summarized, as follows:

(1) AMDS should have been considered nonresponsible for the work in question because of the company's "past record of disregarding specifications" and the company's "apparent intent to disregard specifications in the present solicitation" through submission of an excessively low bid.

(2) AMDS's bid should have been rejected because it is premised on the violation of IFB clauses B14 and B16 relating to "Qualified Products" requirements. Specifically, the awardee is "doing to a significant extent its own blending and manufacture of materials" even though it "is not listed as a [Qualified Products List] plant for blending of materials."

[Protests INVOLVING AWARD and IFB
CANCELLATION]

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(3) AMDS was given preferential treatment by being allowed to withdraw its bid on lot 1 with "apparent ease" even though AMDS's "prices on all lots, including lot 1, were consistent in their relation to the average bid prices by the other bidders"; moreover, AMDS's "prices on lot 1 items were very similar to lot II and III items calling * * * for the same type of work," yet no mistake claim was made for lots II and III.

(4) The Navy's decision to cancel lot 1 because the protester's prices were considered unreasonably high in comparison with prior contracts' prices is erroneous because it was based on faulty conclusions drawn from a survey of four prior contracts. The prior contracts--unlike the contemplated contract for lot 1--were jobs where the contractor was able to "ascertain the conditions, area, and other requirements * * * prior to bidding," whereas the IFB here did not provide this opportunity; moreover, prices for these jobs vary drastically depending on the actual conditions involved.

The Navy has replied to the above grounds of protest, as follows:

(1) "Contractor files at NSC San Diego reflect an extensive record of satisfactory performance by AMDS.

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"The variations in bid prices * * * do not necessarily lead to a conclusion that the low bidder intends to violate contract specifications. The variation may be explained by [the companies' differing] perception of contract risk, willingness to accept a higher degree of risk in contract performance, [as well as] a possible 'buy-in' situation. It is the contracting officer's opinion that reasonable steps were taken to determine the reasonableness of AMDS' bid * * *."

(2) "The protester alleges that AMDS is 'presently doing to a significant extent its own blending and manufacture of materials,' but provides no basis for this allegation. As stipulated in its bid, the QPL products

being supplied by AMDS under this contract are valid QPL products manufactured by Crossfield Products Corporation and S. P. Kish Industries, Inc., both of which are listed on QPL's 3134-55 and 3135-34. This information was confirmed as part of the pre-award survey conducted by DCASMA San Diego. There is no evidence to support the conclusion that AMDS intends to either manufacture or blend QPL materials in violation of the contract specifications. AMDS will be required to conform fully to the contract requirements."

(3) "DAR provides in 2-406.1 that 'after the opening of bids, the contracting officer shall examine all bids for mistakes. In cases of apparent mistake, and in cases where the contracting officer has reason to believe that a mistake may have been made, he shall request from the bidder a verification of the bid.' When asked to verify its bid on lot I, AMDS alleged a mistake in bid and requested correction thereof. DAR 2-406.3 provides that in order to permit correction, the evidence must be clear and convincing both as to existence of the mistake and as to the bid actually intended. While the evidence did support the existence of a mistake, it did not, in the contracting officer's opinion, demonstrate in a clear and convincing manner, the bid actually intended. In accordance with DAR 2-406.3(a)(1), the contracting officer did permit withdrawal of the bid, upon the bidder's request. With respect to the award of Lots II and III, AMDS twice verified its bid on Lots II and III. The contracting officer verified that its bid prices on Lots II and III were in line with previous government procurement costs for similar work and manufacturers' cost estimates of installation."

(4) "DAR Section 2-404.9(b)(vi) provides, 'the preservation of the integrity of the competitive bid system dictates that, after bids have been opened, award must be made to the responsible bidder who submitted the lowest responsive bid, unless there is a compelling reason to reject all bids and cancel the solicitation . . . IFB's may be cancelled after opening, but prior to award when . . . the contracting officer determines in writing that . . . (vi) all otherwise acceptable bids received are at unreasonable prices.' AMDS requested corrections of its bid on Lot I to \$141,000. While it was not permitted to do so, a government estimate based on prior procurements indicated that the price would have been in line with work accomplished by the purchase order method of procurement. The next lowest bid of \$331,000 was over 130 percent more than the proposed corrected bid prices of AMDS. A determination was made, therefore, that the second low bid was unreasonable as to price and the solicitation was cancelled pursuant to DAR 2-404.9(b)(vi). It is the contracting officer's opinion that such action was reasonable and proper."

GAO Analysis

(1) The protesters argue that AMDS should have been found to be other than a responsible concern. Our Office, however, no longer reviews agency decisions that find concerns to be responsible in the absence of certain exceptions which are not applicable here. C.E. Wylie Construction Company, B-192806, October 11, 1978, 78-2 CPD 272. Moreover, the possibility of a "buy-in" obtained through submission of an allegedly excessively low bid does not justify rejecting the otherwise acceptable bid in the absence of a finding--not present here--that the bid would adversely affect the bidder. Harris Management Company, Inc., B-193049, May 30, 1979, 79-1 CPD 382. Consequently, we will not review this ground of protest.

(2) We cannot question the Navy's response to this ground of protest.

(3) Although our Office has retained the right of review of a procuring agency decision concerning a mistake alleged after bid opening but prior to award, the procuring agency's decision as to the weight to be given the evidence in support of an alleged mistake will not be questioned by our Office unless the decision is unreasonably founded. 53 Comp. Gen. 232, 235 (1973).

Since AMDS twice verified its bid on lots 2 and 3 and the company's prices were in line with previous Navy costs for similar work, the prices bid by the company for these lots--although much lower than other prices bid--are irrelevant to the question whether the Navy properly permitted AMDS to withdraw its bid for lot 1. Similarly, since no other bidder claimed error in its bid, the prices bid by others are irrelevant to the AMDS bid error on lot 1 to the extent AMDS submitted clear evidence of the error.

Based on our review of the record, we cannot question the procuring activity's decision to permit AMDS to withdraw its bid in view of the evidence submitted by the company which shows that AMDS omitted "overhead, fixed expenses and profit" from its bid for the items in question.

(4) Our Office has consistently recognized that contracting officers may properly exercise a broad range of discretion in deciding whether to cancel IFB's based on analysis of prices bid. See St. Louis Ship, B-191847, August 4, 1978, 78-2 CPD 89.

We are not in a position to question the contracting officer's analysis which led to a conclusion that acceptable bids for lot 1 were unreasonably priced. Specifically, we note the finding that the acceptable bids exceeded by more than 130 percent the proposed corrected bid of AMDS--which was in line with prices paid by purchase order for the same or similar work. Nor are we able to question the contracting officer's implicit view that prior work was sufficiently similar to the work involved here that a price comparison of past and current work was justified even recognizing that the work conditions involved were not identical.

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Protests denied.

Acting

R. F. K. 1/11/44
Comptroller General
of the United States