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DECISION



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

10,672

FILE: B-194435

DATE: July 9, 1979

MATTER OF: Espey Manufacturing and Electronics Corporation

DLG-02057

DIGEST:

Protest of

Rejection of all bids and cancellation of IFB on basis of unreasonable prices is proper where protester's bid is 23 percent higher than low nonresponsive bid, which was adjusted by agency to reflect increased quantities in unacknowledged amendment. Contracting officer's partial reliance on erroneous information in deciding to cancel procurement is insufficient basis for concluding that protester's bid was improperly determined to be unreasonable where subsequently developed information supports the determination.

Espey Manufacturing and Electronics Corporation (Espey) protests the cancellation of invitation for bids (IFB) No. N00140-78-B-1788, issued by the Navy for two types of glide slope indicators with spare parts kits.

Espey protests on essentially two grounds: (1) that, notwithstanding the Navy's statements to the contrary, all bids were not rejected because of the unreasonableness of the prices; and (2) that there was no basis upon which to conclude that Espey bid an unreasonable price.

The Government estimate was \$159,700. The estimate was prepared to support the original purchase request and was not thereafter modified although the IFB was amended six times to provide missing drawings, make technical clarifications, update the drawing package, extend opening dates, and, finally, increase the quantity of one type of glide slope indicator and kit from 7 to 15.

Three bids were received in response to the solicitation. The bid of Connecticut Valley Industries, Inc. (CVII), was rejected as nonresponsive for failure

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to acknowledge the sixth amendment which increased the quantities. The Navy inadvertently failed to mail the amendment to CVII. CVII's bid offered the lowest unit prices for all items set forth in the original solicitation. Espey's bid was second low and responsive at \$298,000. The third low bid was \$736,000. However, this was reduced to \$370,860 by a late modification.

The Navy reports that the contracting officer went through the following procedures in determining to cancel and resolicit the procurement: (1) the Espey bid (\$298,000) was compared with the Government estimate (\$159,000); (2) the Espey bid was compared with the "extended" CVII bid (\$241,348.11) (revised quantities of unacknowledged amendment times the bid's unit prices); and (3) a previous (March 1977) Espey unit price bid (\$1,950 for 41 units) for a similar item was compared with the current Espey unit price bid (\$4,000 for 37 units). The record shows that the decision to cancel the IFB was based primarily upon the difference between the Espey bid and the nonresponsive "extended" bid of CVII. In reporting his decision to cancel and readvertise to the Naval Regional Procurement Office, Review Board (Board), the contracting officer observed:

"* * * it is considered that the significant difference of \$56,651.00 in the second low bidder price would merit consideration for the cancellation and re-solicitation of this procurement. This difference is based on the negotiator computing what * * * [CVII's] bid prices would be for the increased quantities using the bid unit prices vs. bid prices of * * * [Espey].

* * * * *

"Considering there was no deliberate intent on the part of Government to prejudice this procurement and in the best interest of the Government to obtain the most reasonable price, it is felt that the cancellation and re-solicitation is justified based on the price difference revealed in the present IFB and for reasons detailed

above. It is therefore recommended that approval be granted to cancel IFB N00140-78-B-1788 and resolicit with a twenty day opening date, all bidders who were solicited or requested a bid set.

"This was discussed with Office of Counsel * * * [attorney] who is in agreement with this recommended course of action.

"REVIEWED BY COUNSEL: YES NOT REQUIRED"
(Emphasis supplied.)

These remarks were followed by the attorney's handwritten concurrence which reads:

"Concur

"Cancellation of IFB on basis that responsive bids are at unreasonable price is supportable.

* * * [attorney]"

The Board concurred in the contracting officer's decision.

The Navy contends that all bids were rejected because the prices were unreasonable. Espey, however, because the Board documents do not use the word "unreasonable," urges that the "actual writings and memoranda before any lawyers got involved" (emphasis in original) indicate that the cancellation was based upon price difference and not unreasonableness. Espey believes that underlying the cancellation is nothing more than the Navy's desire to make amends for failing to mail the final amendment to CVII. Espey points out that when the Navy originally notified it of the rejection of its bid it failed to furnish any reason for the rejection.

We disagree with Espey. The above-quoted form shows that review by counsel was a prerequisite to support any final Board action on the cancellation apparently to insure that Board action has a legal basis. The attorney's handwritten concurrence indicated that the procurement could be cancelled on the

basis of unreasonable price. In any event, it is clear to us that an unreasonable price determination was inherent in the contracting officer's and Board's decisions to cancel the procurement and the contemporaneous documentation's failure to include the term "unreasonable price" is of no consequence.

In the contracting officer's presentation to the Board, the following factual statements were made to support the relevance of the CVII bid for price reasonableness purposes:

"The negotiator has informally reviewed * * * [CVII's] performance history with DCASMA [Defense Contract Administration Services Management Area] Hartford and NAEC. They reported the company to be a satisfactory source of supply.

"DCASMA advises that the company completed their four Government contracts with little or no delay. Currently they have a Navy contract for microfilm viewers totalling \$2,380,000.00 and two Air Force contracts for overhead projectors totaling \$264,000.00 and \$381,000.00 respectively. NAEC Representative * * * has dealt with this contractor on contract N00156-78-C-1090 for lighting Control Panels used in the Glide Slope Systems. The contract totalled \$50,000.00 and * * * [CVII] delivered a satisfactory product. * * * [NAEC Representative] feels that with * * * [CVII's] experience with optics, they would be a satisfactory supplier for the equipment required under this IFB."

Espey rebutted the above statements and advised that the \$2,380,000 microfilm viewer contract was not awarded to CVII but was instead awarded to a company having a similar name. Espey believes that the two Air Force contracts were also awarded to the firm with the similar name because the contract numbers indicate award 2 years prior to the incorporation of CVII. Finally, regarding

the \$50,000 for lighting control panels which were alleged to have been satisfactorily delivered, Espey learned that a March 19, 1979, delivery date had not been met.

The Navy admits that Espey is correct in that the \$2,380,000 microfilm viewer contract and the two Air Force contracts were awarded to a firm other than CVII. The Navy also admits that delivery has not been made under the \$50,000 lighting control panel contract. However, the Navy notes that nondelivery is not attributable to CVII but is the result of a requirement for source-controlled drawings and difficulties with one vendor. The Navy points out that the contracting officer's representative (the contract negotiator) made a good-faith effort to ascertain CVII's status as a Government contractor in order to better determine what weight to accord its nonresponsive bid in making a prudent business decision regarding whether or not to cancel. Neither the contracting officer nor the contract negotiator knew or suspected that DCASMA had furnished partially erroneous information.

Although the initial information upon which the cancellation was based was not completely accurate, the subsequently developed information, in our opinion, supports the contracting officer's reliance on CVII's "extended" bid price in determining whether to cancel the procurement.

In a recent case we observed that:

"A determination that a bid price is not reasonable is a matter of administrative discretion which our Office will not question unless it is unreasonable or there is a showing of bad faith or fraud. See G.S.E. Dynamics, Inc., B-189329, February 13, 1978; Support Contractors, Inc., B-181607, March 18, 1975, 75-1 CPD 160. The determination may be based upon comparison with a Government estimate, past procurement history, current market conditions, or other relevant factors, including any which may have

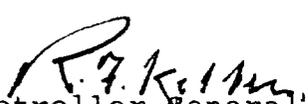
been disclosed by the bidding. See G.S.E. Dynamics, Inc., supra; Westinghouse Electric Corporation, 54 Comp. Gen. 699, 702 (1975), 75-1 CPD 112; 36 Comp. Gen. 364 (1956)."
Schottel of America, Inc., B-190546, March 21, 1978, 78-1 CPD 220.

We also stated in Schottel that a contracting officer's determination regarding price reasonableness can be based solely on a comparison of the bids received with the bid of a nonresponsive bidder such as CVII. Here Espey's bid is 23 percent higher than CVII's "extended" nonresponsive low bid. We have upheld the rejection of all bids because of unreasonable prices where the low responsive bid was only 13 percent greater than a lower nonresponsive bid. See Colonial Ford Truck Sales, Inc., B-179926, February 19, 1974, 74-1 CPD 80.

On this record, we cannot conclude that the contracting officer's decision to cancel the IFB was unreasonable under our standard of review.

We note that Espey has requested that the Navy document its failure to mail the sixth amendment to CVII. We agree with the Navy that such documentation is irrelevant in the context of this protest since Espey's allegation concerning this issue is unsupported by the record.

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States