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DECISION

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

FILE: B-196588

DATE: February 15, 1980

MATTER OF: Lipps, Inc.

DIGEST:

[Protest

1. Decision to withdraw small business set-aside based upon determination that prices received from small business concern are unreasonable will not be disturbed by GAO unless determination is unreasonable or there is showing of bad faith or fraud.

2. Large business offers on small business set-aside procurements may be considered in determining reasonableness of small business offer.

3. All relevant factors may be considered in determining reasonableness of offers including Government estimates, prior procurement history, current market conditions and information disclosed from bids.

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CNG01790

Lipps, Inc. (Lipps), a small business, protests the withdrawal of a total small business set-aside under Requests for Proposals (RFP) Nos. F04606-79-R-0618 and F04606-79-R-0694 issued by the Sacramento Air Logistics Center, Department of the Air Force (Air Force). As originally drafted, the RFPs solicited offers for indefinite quantity type contracts for the procurement of 10 channel record and reproduce heads for use in aircraft monitoring recorders. RFP 0618 was for the procurement of a maximum quantity of 1600 reproduce heads, and established a minimum purchase of 776 units; RFP 0694 was for a maximum of 1600 recording heads (976 minimum). After withdrawal of the set-aside, the solicitations were amended to provide for firm

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quantities of 700 units under 0618 and 1000 under 0694. The set-aside was withdrawn after the contracting officer concluded that the prices offered by Lipps, the only eligible offeror under the set-asides, were unreasonable.

As its basis for protest, Lipps asserts that its prices were fair and reasonable when judged either against prior procurements for the same items, or the total minimum quantities established by the original RFP, and that it was improper for the contracting officer to use the prices offered by a large business to judge the reasonableness of a small business offer under a total set-aside. We disagree.

Two firms, Lipps and Magnasync Moviola Corporation (Magnasync) submitted offers in response to the RFPs, with Magnasync the apparent low offeror under both solicitations. Lipps challenged Magnasync's status as a small business and the matter was referred to the Small Business Administration which subsequently determined that Magnasync was a large business. Since Lipps' proposals were aggregately 20.4 percent higher than Magnasync's, the contracting officer concluded that Lipps' prices were unreasonable and that acceptance of its offer would not be in the Government's best interest. Thus, with the acquiescence of the small business representative, the small business set-aside was withdrawn for these procurements. Defense Acquisition Regulation (DAR) § 1-706.3 (1976).

As a preliminary matter, the withdrawal of a small business set-aside based upon a determination that prices received from a small business concern are unreasonable is a valid exercise of the authority of the contracting agency and our Office will not question that determination absent a showing of unreasonableness, bad faith or fraud. Gregory Elevator, Inc., B-193043, January 19, 1979, 79-1 CPD 32. There is no allegation of bad faith or fraud in this case, and neither is apparent in the record.

We have consistently recognized that large business offers on small business set-aside procurements may be considered in determining whether a small business offer submitted on the procurement is unreasonable. Jig Boring Specialties, Inc., B-192878, February 15, 1979, 79-1 CPD 189. In this case, the contracting officer found that the unit price differential on the two offers were 12.5 percent and 28.3 percent and on this basis, determined Lipps' prices unreasonable. In this regard, we have upheld the rejection of an offer as unreasonable where the lowest eligible bid or offer exceeded the basis for comparison by as little as 7.2 percent. Coil Company, Inc., B-193185, March 16, 1979, 79-1 CPD 185. We therefore do not believe there is any reason to object to the contracting officer's determinations on these bases.

With respect to the allegation that Lipps' prices were fair and reasonable when measured against the minimum rather than the maximum quantities specified for purchase, we point out that the price differential ratio remains consistent, regardless of the quantities purchased. Thus we believe that the contracting officer's finding that Lipps' prices were unreasonable was a valid exercise of his authority in this instance, notwithstanding the fact that the total expenditure would be less if only the minimum quantities were used for comparison purposes.

Finally, with respect to Lipps' contention that its offers were fair and reasonable when compared to prior procurements because they were 20 percent less than its 1977 contract price, we note that the contracting officer is not limited to historical information in the consideration of these matters. While the determination of price reasonableness may be based on past procurement history, other factors may also be legitimately considered, i.e., Government estimates, current market conditions, and other relevant factors, including any which may have been disclosed from the bids. See Schottel of America, Inc.,

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B-190546, March 21, 1978, 78-1 CPD 220. In this connection, although the determination to reject a bid or offer as unreasonable in price must be based on the facts available at that time, we have taken into consideration the results of the solicitation as evidence in support of that determination. Coil Company, supra. Here, the unrestricted RFP resulted in a substantial reduction in prices from both offerors, so that in hindsight, the reasonableness of the decision to withdraw the set-aside appears proper.

The protest is denied.



Deputy Comptroller General
of the United States