

Melody

DECISION



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

[Protest Against IFB Cancellation] PL2
15799

FILE: B-199364; B-200303

DATE: October 20, 1980

MATTER OF: Freund Precision, Inc.

DIGEST:

1. Rejection of sole responsive bid and resolicitation on basis of unreasonable price was proper where price was significantly higher than past procurement prices, Government estimate, and nonresponsive bid price, even though bidder may have incurred costs due to unnecessary preaward survey; however, decision to cancel clearly should have been made before subjecting bidder to preaward survey.
2. Extension of bid opening to maximize competition is not improper even though it was initiated at request of prospective bidder.

Freund Precision, Inc. (Freund) protests the cancellation of invitation for bids (IFB) No. DLA 900-80-B-1393 issued by the Defense Electronics Supply Center, Defense Logistics Agency (DLA) (B-199364), and the award of a contract to any other firm under DLA's resolicitation of this requirement (B-200303).

IFB -1393 solicited bids for various step-ladder quantities of arrestor caps. DLA subsequently determined that it would award a contract for 6,242 items and the bids for that quantity were as follows:

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Lightning Protection Corp.	\$2.50/unit
Freund	\$8.33/unit

The Lightning Protection Corp. (Lightning) bid was rejected as nonresponsive because it was unclear whether the item offered conformed to the specifications. The agency then began processing an award to Freund, the only other bidder. A preaward survey was requested in light of "performance problems" encountered with Freund on prior procurements. The resulting report contained a negative award recommendation. When the matter was referred to the Small Business Administration (SBA) for a certificate of competency (COC), however, the SBA indicated that a COC would likely be approved.

Upon receipt of this information from the SBA, the contracting officer reexamined the procurement file and reports that he discovered for the first time that Freund's price might be unacceptably high. In making this observation, the contracting officer compared Freund's bid to the Government estimate, the nonresponsive bid submitted by Lightning, and the price paid for the item in previous procurements. The contracting officer also contacted the contractor for the prior procurements (Raytheon) and that firm indicated that its prior prices were in line with prices it would have bid on the procurement. Based on these comparisons, the contracting officer rejected Freund's bid as unreasonable, canceled the procurement and resolicited the requirement.

Freund maintains that the prices used for comparison were not necessarily reliable indicators of price reasonableness and that rejection of its bid and cancellation of the procurement on this ground were therefore improper. The protester also seems to argue that regardless of the reasonableness of its bid price, the solicitation should not have been canceled after completion of the preaward survey and COC review since Freund incurred costs complying with these procedures. The relief requested is cancellation of the resolicitation and award to Freund on the basis of its original "fair and reasonable" bid.

Defense Acquisition Regulation (DAR) § 2-404.1(a) (DAC 76-17, September 1, 1978) provides in substance that after bids have been opened award must be made to the lowest responsible bidder unless there is a compelling reason to cancel all bids and resolicit. The regulation also provides that a solicitation may be canceled after opening if the prices of all otherwise acceptable bids are unreasonable. DAR § 2-404.1(b)(vi). Such a determination of unreasonableness involves broad discretion on the part of the contracting officer and will not be disturbed absent a showing of fraud or bad faith. Penn Landscape & Cement Work, B-196352, February 12, 1980, 80-1 CPD 126; St. Louis Ship, B-191847, August 4, 1978, 78-2 CPD 89. We have recognized that such a determination may properly be based upon comparisons with a Government estimate, past procurement history, a nonresponsive bid, current market conditions, or any other relevant factors, including any which may have been revealed by the bidding. PM Contractors, Inc., B-192495, January 8, 1979, 79-1 CPD 8; Schottel of America, Inc., B-190546, March 21, 1978, 78-1 CPD 220.

In the instant case, the contracting officer rejected the protester's bid as unreasonable after finding it to be 66 to 140 percent higher than past procurement prices, 53 percent greater than the Government estimate, and more than three times greater than Lightning's nonresponsive bid. While Freund takes exception to the use of these factors as a basis for rejection of its bid and cancellation of the solicitation, as indicated above the factors which the agency considered are precisely those which we have indicated may properly be taken into account in determining unreasonableness of price. Further, we see no merit in Freund's position that since the IFB contained a notation that the Value Engineering Clause is to be included "if the award exceeds \$50,000" the Government's \$33,956.48 estimate is questionable. While DLA anticipated a requirement of 6,242 units, the solicitation called for bids on step-ladder quantities up to 25,000 units to allow for any additional needs. It was therefore possible that an award would be made for a quantity the value of which would greatly exceed \$50,000. Of course, the quantity ultimately required remained at 6,242 units and the estimate used reflected this amount. Thus, we have no basis to question the agency's determination in this matter.

We note, however, that while we have no objection to the cancellation, a preaward survey was inappropriate under the circumstances. As we have stated, a determination to reject all bids and to issue a resolicitation based on unreasonable prices should be made as soon as possible after bid opening. Container Services, Inc., B-180796, May 31, 1974, 74-1 CPD 294. DLA's failure here to consider price reasonableness prior to initiating a preaward survey (which later necessitated a COC review by the SBA), was inefficient and, certainly, misleading to the protester.

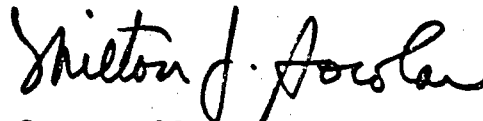
As noted above, Freund has also protested the award to any other firm under IFB No. DLA900-80-B-3724, the resolicitation of this arrestor cap requirement. Although the second protest is basically on the same grounds as the first, the protester additionally contends that the bid opening for the resolicitation was improperly extended from August 7 to August 21, 1980 at the request of Raytheon, a prospective bidder.

As a general rule, we are concerned with agency actions which unduly restrict competition rather than those which tend to increase competition. We have held in a negotiated procurement that we will examine an agency's refusal to grant an extension of the period for submission of proposals to determine whether such refusal was arbitrary or capricious. National Small Business Associates, Inc., B-184052, September 26, 1975, 75-2 CPD 196. Conversely, we have stated that where an extension of the period for the submission of best and final offers tends to enhance competition, there is no basis for objection by our Office. EDMAC Associates, Inc., B-194680, August 30, 1979, 79-2 CPD 168; Solar Resources, Inc., B-193264, February 9, 1979, 79-1 CPD 95.

Here, the Army advises that the amendment postponing bid opening was issued pursuant to the contracting officer's desire to maximize competition. In view of the standard cited above, which we believe applies equally to advertised procurements, we have no reason to object to this action.

Nor is this action rendered improper by the fact that it was initiated at the request of a potential bidder. See generally, Quaker Business Associates, Inc., B-187207, November 17, 1976, 76-2 CPD 430.

The protests are denied.

A handwritten signature in cursive script, reading "Milton J. Fowler".

For the Comptroller General
of the United States