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## DECISION

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

FILE:

B-204526

DATE: December 30, 1981

MATTER OF:

Ace-Federal Reporters, Inc.

## DIGEST:

Protest that the low bid for stenographic reporting services is nonresponsive because the price bid for duplicate copies furnished to the public is allegedly unreasonably high is denied. GAO has no basis to question the contracting agency's determination that the bid price is reasonable based on information furnished to the agency by the low bidder, the rates bid by the other bidders, and the protester's bid on prior year's contract.

Ace-Federal Reporters, Inc. (Ace), protests the award of a contract to any other bidder under the National Labor Relations Board (NLRB) invitation for bids (IFB) No. 82-B-100, for stenographic reporting, transcription and duplication services. Ace, the highest bidder (\$4,312,720), essentially contends that the five lower evaluated bids are nonresponsive and that award should be made to Ace.

During the course of the protest, the contract was awarded to Acme Reporting Services, Inc. (Acme), the lowest bidder (\$1,963,355). The award renders Ace's protest concerning the other bids academic, and we therefore dismiss this portion of Ace's protest. We will consider the protest only with respect to Acme's bid. Engine and Equipment Company, Inc., B-199480, May 7, 1981, 81-1 CPD 359; McNab, Incorporated, B-195105, January 29, 1980, 80-1 CPD 78.

For the reasons discussed below, we deny the protest.

The IFB called for prices (per page) covering reporting service costs to the Government and prices for duplicate copies furnished to the public. These latter costs were not to be evaluated other than to assure reasonableness.

The protester asserts that Acme's bid is nonresponsive because the firm's bid price of \$0.98 per page for duplicate copies to the public is so unreasonably high that, contrary to the terms of the IFB, it must include reporting service costs to the Government which were allegedly bid below cost. Ace insists that its bid of \$0.20 per page, a sampling of commercial duplicating firm charges which did not exceed \$0.25 per page, and duplicating prices of \$0.15 per page obtained by the Occupational Safety & Health Administration (OSHA) and the Congress show that Acme's duplicate copy price is clearly unreasonable. To support its position, the protester suggests that the IFB's Service Contract Act minimum wage determination for stenographers and transcribers cannot be met at the low price Acme bid for services to the Government without subsidization from the contractor's duplicate copy revenues from the public. Ace concludes that Acme's bid does not comply with the IFB requirement that the price bid for duplicate copy furnished to the public be reasonable and that the NLRB's determination to the contrary is improper.

The protest is based on a misconception of the ultimate objective of formally advertised procurements for stenographic reporting services which has pervaded similar protests previously considered by our Office. See, for example, Interstate Court Reporters, Inc., B-201350, April 10, 1981, 81-1 CPD 279; CSA Reporting Corporation, B-196545, June 20, 1980, 80-1 CPD 435; Ace-Federal Reporters, Inc., 54 Comp. Gen. 340 (1974), 74-2 CPD 239. The contracting agency's purpose is to acquire these services for the agency at the lowest reasonable cost to the Government, in a manner consistent with its statutory obligation to ensure that the cost of duplication services provided to the public is not unreasonable. Award to Ace, however, would have the opposite effect--the acquisition of duplication services at the lowest cost to the public without regard to the cost of reporting services provided to the agency.

The IFB defines "actual cost of duplication" as the price that would be paid to a commercial duplication firm in a competitive market, including reasonable overhead and profit, but none of the original cost of the transcription. It further states that pursuant to the Federal Advisory Committee Act and the Freedom of Information Act (FOIA), the NLRB reserves the right to make additional copies of transcripts available to the public at the actual cost of duplication.

We have held that the price limitation imposed by the Federal Advisory Committee Act, § 11, 5 U.S.C. app. (1976), does not apply to contractors and that the act does not require any particular procedures on the part of agencies contracting for reporting services, so long as the public is adequately protected against paying unreasonably high prices for duplicating services. CSA Reporting Corporation, 59 Comp. Gen. 338 (1980), 80-1 CPD 225. The FOIA requirements, 5 U.S.C. § 552 (1976), are also satisfied by the agency's determination in this regard. Securities Exchange Commission, B-184120, July 2, 1975, 75-2 CPD 9.

The NLRB comments with regard to the contract prices cited by Ace that although copies are furnished to congressional committees at \$0.15 per page, contractors currently charge \$1 to \$1.25 per page for copies ordered by the public. The contracting agency further explains that the OSHA solicitation reflects a duplicate copy price preset by that agency in 1977 on the basis of a previous General Services Administration contract. The NLRB contends that given the information Acme submitted in support of its duplicate copy price and the rates quoted by the other bidders, Ace has shown no basis upon which to question its determination that Acme's bid price was reasonable.

Acme takes the position that its duplicate copy bid is in accordance with NLRB procurement history for these contracts which were awarded at \$0.71 and \$0.85 per page for fiscal years 1980 and 1981, respectively. Acme suggests that Ace's argument is inconsistent with the protester's prior bidding practices, noting, for example, that Ace bid \$0.85 per page for duplicate copy in response to the NLRB solicitation for fiscal year 1981.

We agree with the NLRB and Acme. Our review of the abstract of bids shows that the prices bid by Acme are consistent and closely within the price range of the other bids submitted for the same services, while there is a wide disparity between the prices bid by Ace and the other participating bidders. The evaluated bid prices for the NLRB's reporting services range from Acme's low bid of \$1,963,355 to \$3,758,687, while Ace bid \$4,312,720. Similarly, bids for duplicate copy range from \$0.85 to \$1.20 per page, in contrast to Ace's bid of \$0.20 per page. Reviewing similar protests, we have held that other bid prices can be used to establish that the awardee's bid prices are reasonable. Furthermore, a disparity between a protester's price and a narrow range of prices of several other bidders has been viewed as supporting the conclusion that the protester's position has no merit. Ace-Federal Reporters, Inc., supra; see Interstate Court Reporters, Inc., supra. Moreover, only the services to the Government were to be evaluated, provided that copy prices were determined not to be unreasonable based on the low bidder's evidence to support its duplicate copy prices. Acme supplied evidence to support those prices to the satisfaction of the NLRB. Despite Ace's insistence to the contrary, we find no basis upon which to question the NLRB's determination that Acme's bid price for duplicate copy is reasonable. In view of our conclusion, we need not address Ace's speculative suggestion concerning Acme's compliance with the Service Contract Act.

Finally, in conjunction with its protest, Ace asked that we audit Acme's bid prices and supporting cost data. Because the protester has the burden of affirmatively proving its case, our Office will not conduct an investigation to establish the merits of a protester's arguments. Where, as here, the protester has not met that burden, we have also concluded that insufficient information has been furnished to justify such a review. Photonics Technology, Inc., B-200482, April 15, 1981, 81-1 CPD 288.

We dismiss in part and deny in part the protest.

*Harry D. Van Cleave*  
For Comptroller General  
of the United States