

DECISION

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

FILE: B-220082.2

DATE: December 31, 1985

MATTER OF: California Scaffold Corporation

DIGEST:

1. Protest alleging that bid was submitted on an "all or none" basis and that agency improperly made only a partial award to the protester is untimely when filed more than 10 working days after the partial award to the protester since agency's actions are inconsistent with protester's alleged "all or none" qualification.
2. Protest challenging procuring agency's determination that bid price for one line item is unreasonable is timely where filed within 10 working days of the protester's receipt, under the Freedom of Information Act, of agency's price analysis.
3. A contracting officer's determination concerning price reasonableness is a matter of administrative discretion which GAO will not question unless the determination is clearly unreasonable or there is a showing of possible fraud or bad faith.

California Scaffold Corporation (CSC) protests the partial rejection of its bid by the Department of the Navy under invitation for bids (IFB) No. NOO244-85-B-0233 for the provision of fixed and rollable scaffolding. CSC, part of a joint venture that submitted the only bid under the IFB, was awarded a contract for the rollable scaffolding. The Navy rejected CSC's bid for the fixed scaffolding based on a determination that CSC's price for this item was unreasonable. CSC alleges that the Navy did not properly evaluate CSC's price for the fixed scaffolding, and that the Navy lacked a cogent and compelling reason justifying its failure to award this item. In addition, CSC alleges that

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its bid was on an "all or none" basis and, since it was awarded a contract for the rollable scaffolding, it is also entitled to a contract for the fixed scaffolding.

We deny the protest in part and dismiss it in part.

Initially, we note that the Navy argues that CSC's protest is untimely. The Navy contends that it advised CSC on September 4 that no award for fixed scaffolding would be made to the firm. Since CSC did not file its protest until October 3, the Navy argues that the protest should not be considered on the merits. In addition, the Navy indicates that a partial award for the rollable scaffolding was made to CSC on August 30 and contends that this action should have put CSC on notice that its bid was not considered to contain an "all or none" qualification. The Navy contends that this issue therefore should have been raised within 10 working days of the award date.

Clearly CSC's acceptance of the partial award for rollable scaffolding is inconsistent with its allegation that it qualified its bid on an all or none basis. In any event, CSC did not raise this issue in a timely fashion. The Navy's partial award to CSC for rollable scaffolding clearly demonstrated that the Navy did not believe that it was required to accept CSC's entire bid. The Navy's actions were inconsistent with the all or none interpretation of the bid asserted by CSC and since CSC did not raise this issue within 10 working days of the August 30 award date, it will not be considered.

To the extent the protester challenges the Navy's withholding the award based on a determination of price unreasonableness, the protester did not learn of the basis for the determination until recently. The price analysis was contained in a memorandum which CSC obtained under the Freedom of Information Act. Since there is nothing in the record which indicates that CSC failed to file its protest within 10 days of receiving the document, we find this allegation timely and we will consider it on the merits. See Bancroft Investors, B-219915, Nov. 19, 1985, 85-2 CPD ¶ ____.

The Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.404-1(a)(1) (1984), provides that after bids have been opened, award must be made to the lowest responsible bidder unless there is a compelling reason to reject all bids and

resolicit. The regulation also provides that a solicitation may be canceled after bid opening if, where only one bid is received, the contracting officer cannot determine that the price is reasonable. FAR § 14.404-1(c)(6) (FAC 84-5, Apr. 1, 1985). 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. Security Fence Co., B-218587, July 22, 1985, 85-2 CPD ¶ 67; Mid South Industries, Inc., B-216281, Feb. 11, 1985, 85-1 CPD ¶ 175. In this regard, we have recognized that a determination of price reasonableness properly may be based on a comparison with such things as a government estimate, past procurement history, current market conditions, or any other relevant factor. Omega Container, Inc., B-206858.2, Nov. 26, 1982, 82-2 CPD ¶ 475.

Here, the IFB specified estimated quantities for various heights of fixed scaffolding and bidders were requested to provide "per week" and "per month" unit prices. The contracting officer multiplied the listed quantities for each subitem by CSC's "per week" and "per month" unit prices and compared the totals to the unit prices under a prior solicitation multiplied by the same estimated quantities. The prior prices included those of the incumbent contractor. As a result of this comparison, CSC's price for the fixed scaffolding was found unreasonably high (more than 36 percent higher than the incumbent's price).

CSC does not disagree with the Navy's conclusion that the totals used for comparison purposes showed a significant price difference. Rather, CSC argues that the IFB's estimated quantities are unrealistic and that the contracting officer should not have utilized these estimates in evaluating CSC's price. CSC further argues that under the IFB, the Navy was required to aggregate the total price for fixed and rollable scaffolding, and that under this method, CSC's overall price is not out of line with past procurement prices for the same requirement.

We find nothing improper in the price analysis which was conducted by the Navy. The record shows that the Navy used the estimates solely to project a quantity for comparing CSC's prices with the prices under prior solicitations. Under these circumstances, the accuracy of the estimated quantities is irrelevant. As regards CSC's assertion that only its total price for all items should have been examined for reasonableness, we point out that the contracting officer was not determining which bidder was low for the purpose of an aggregate award, but whether the offered price for a particular item was unreasonable.

Accordingly, we do not believe that CSC has shown that the contracting officer abused her discretion in any manner by finding CSC's price for fixed scaffolding unreasonable and canceling that portion of the IFB.

The protest is denied.

for Seymour E. ...
Harry R. Van Cleve
General Counsel