

**DECISION**

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

**FILE:** B-219348.3      **DATE:** April 3, 1986  
**MATTER OF:** Reyes Industries, Inc.

**DIGEST:**

Contracting officer's determination of price reasonableness involves broad discretion and, ordinarily, will not be disturbed absent a showing of fraud or bad faith. Price reasonableness may be based upon comparisons of past procurement history and market conditions. However, one past procurement having higher price than protester's bid price submitted in response to canceled solicitation, lower price received on resolicitation and lower price received as result of contractor lowering its price on an option, are not sufficient evidence to establish that protester's price, submitted in response to canceled invitation, was unreasonable.

Reyes Industries, Inc. (Reyes), protests the award of a contract for folding cots to the Sierra Corporation (Sierra), the low offeror under Defense General Supply Center (DGSC) request for proposals (RFP) DLA400-85-R-9852, a resolicitation of invitation for bids (IFB) DLA400-85-B-5244.

Originally, DGSC canceled the IFB and resolicited under the RFP because of its doubt concerning the authenticity of evidence submitted by Reyes to establish that its bid modification making its bid low should be considered. Reyes' bid modification was sent by certified mail and arrived after bid opening. We found no evidence of any irregularities in connection with the mailing of the bid modification. In our decision in Reyes Industries, Inc., B-219348, B-219348.2, Sept. 30, 1985, 64 Comp. Gen. \_\_\_\_\_, 85-2 C.P.D. ¶ 366, we recommended that the IFB be reinstated and that an award be made to Reyes, if otherwise proper.

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Subsequent to the September 30 decision, DGSC determined that award under the IFB to Reyes would not be proper because the \$33.95 unit price received under the IFB was unreasonable in view of the \$31.73 unit price received on the RFP, the latter amount representing a total savings on the procurement of about \$122,000. Accordingly, DGSC decided to make an award to Sierra under the RFP. However, award has been held up pending the outcome of this protest.

Reyes protested to our Office, arguing that DGSC's determination that prices received under the IFB was unreasonable and the decision to proceed with an award under the resolicitation amounted to an impermissible auction. Reyes requested that our Office recommend that no award be made to Sierra under the resolicitation, and award be made to Reyes under the original solicitation.

We affirm our decision and recommendation.

We agree with DGSC that the contracting officer's determination of reasonableness involves broad discretion and, ordinarily, will not be disturbed absent a showing of fraud or bad faith. We also agree that price reasonableness may be based upon comparisons of past procurement history and market conditions. See Mid South Industries, Inc., B-216281, Feb. 11, 1985, 85-1 C.P.D. ¶ 175 and International Alliance of Sports Officials, B-210491; B-210491.2; B-210491.3, Jan. 10, 1984, 84-1 C.P.D. ¶ 63. However, in the present case, the low price received under the only past procurement mentioned was 6.7 percent higher than Reyes' bid price. While DGSC lists several subsequent procurements, we do not believe that these procurements can be considered to be part of the procurement history because they did not precede the bid on the canceled IFB.

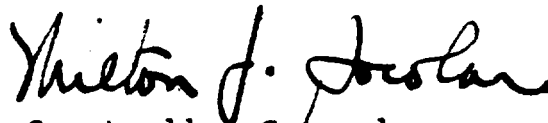
However, the reasonableness of a bid price does depend on market conditions at the time award is made. When we review the list of subsequent procurements furnished to us by DGSC for the purpose of illustrating market conditions at the time the agency was prepared to make award after our original decision, we note that Sierra's unit price under the RFP, \$31.73, is only 6.5 percent lower than Reyes' bid price of \$33.95. Also, it is to be expected that whenever, as in the present case, bid prices are exposed, the solicitation is canceled and the requirement is resolicited, the resolicitation will result in lower prices since competitors know the price which they must underbid. Moreover, in a decision involving circumstances similar to those in the

present case, we held that it would be tantamount to sanctioning a prohibited auction for an agency to determine, based on the offers received on a resolicitation, that the protester's low, responsive bid under the canceled solicitation was unreasonably high since the protester should have received the award under the canceled solicitation. See Professional Materials Handling Co., Inc.--Reconsideration, B-205969.2; B-205969.3 May 28, 1982, 82-1 C.P.D. ¶ 501. Therefore, it is clear that the price received under the RFP cannot be used as a basis to determine that Reyes' bid price under the canceled IFB was unreasonable.

There was only one other procurement where a lower price (5.8 percent lower) than Reyes' bid price was received. In that procurement, the contract price was \$35 per unit. There was also an option in the contract for the government to purchase an additional quantity equal to the contract quantity at the same \$35 price. The contractor made a voluntary reduction from \$35 to \$32 per unit apparently as an inducement to encourage the exercise of the option. Therefore, the \$32 price is not indicative of market conditions or anything other than the contractor's desire to continue to supply the item.

On the basis of the above, coupled with the fact that there were 12 bids received in response to the canceled IFB, which indicates adequate competition, we must conclude that DGSC has failed to establish that Reyes' bid price, submitted in response to the canceled IFB, was unreasonable.

Our prior decision and recommendation is affirmed.



Acting Comptroller General  
of the United States