



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Modular Sales, Inc.

File: B-222594

Date: August 26, 1986

DIGEST

Withdrawal of a small business set-aside is proper where the contracting officer reasonably determined that the "best and final" price submitted by the sole eligible small business offeror was unreasonable.

DECISION

Modular Sales, Inc. (Modular), has protested the decision of the Air Force to cancel request for proposals (RFP) F42650-86-R3161 which was issued on March 21, 1986, as a total small business set-aside for the construction, lease, and maintenance of six modular buildings. The only small business to respond to the RFP was Modular. The Air Force states that it canceled the RFP after determining that Modular's "best and final" price was unreasonable in comparison to the Air Force's internal contract cost estimate (which was not set forth specifically in the RFP) and in comparison to an offer submitted by an ineligible large business.

The Air Force reports that the RFP initially was issued to 49 prospective offerors and later furnished to an additional 14 prospective offerors. Initial proposals were received on April 22, 1986, from Modular and one other offeror which represented itself as a small business. After the initial closing date had passed, the Air Force issued revised engineering drawings for the RFP under an amendment which also called for "best and final" offers. Modular and the other firm responded with revised offers. The Air Force, after determining that the other firm incorrectly certified itself a small business and was actually a large business, rejected the offer of the large business and proceeded to evaluate Modular's offer.

The Air Force determined that Modular's price was unreasonable compared to the government estimate. Specifically, Modular's proposed price was 62 percent higher than the government estimate and 33 percent higher than the large business proposed price. The Air Force then decided to cancel the RFP based on the unreasonableness of Modular's proposed price and under authority of the Federal Acquisition Regulation, 48 C.F.R. § 19.506(a) (1985), which provides that the contracting officer may withdraw a small business set-aside where award would be detrimental to the public interest because the low small business price is unreasonable. The cognizant Small Business Administration official concurred in the decision to withdraw the small business set-aside. On May 16, 1986, the Air Force issued a new unrestricted RFP.

First, Modular complains that the Air Force has improperly refused to disclose the Air Force's cost estimate for the work. The authority to determine what documents should be released to a protester is vested in the contracting agencies, not our Office. Washington Health Services, Ltd., B-220295.2, Feb. 13, 1986, 86-1 C.P.D. ¶ 157.

Modular argues that the Air Force improperly failed to negotiate with Modular concerning a price reduction in Modular's proposal before canceling the set-aside. On the contrary, the record shows, as noted above, that the Air Force gave Modular the opportunity to revise its initial price offer. Generally, we have held that the opportunity given by a contracting agency to an offeror to revise its price proposal constitutes discussions. Systems Engineering Associates Corp., B-187601, Feb. 24, 1977, 77-1 C.P.D. ¶ 137; 52 Comp. Gen. 161, 165 (1972). Further, there is no obligation on a contracting agency to negotiate specifically with a small business offeror to permit that offeror another opportunity to submit a reasonable price once an opportunity has been given the company to reduce its price by a request for best and final offers as under this RFP. See Messinger Bearings Corp., B-219724, Oct. 23, 1985, 85-2 C.P.D. ¶ 448.

As to the propriety of the cancellation, we have held that a determination of price reasonableness for a small business set-aside is within the discretion of the contracting agency, and we will not disturb the determination unless it is clearly unreasonable or there is a showing of possible fraud or bad faith on the part of the contracting officer. Warren/Dielectric Communications, B-212609, Jan. 26, 1984, 84-1 C.P.D. ¶ 121. In making this determination, the contracting officer may consider pricing history or other relevant factors revealed by the bidding, including

consideration of the price submitted by an otherwise ineligible large business. Flagg Integrated Systems Technology, B-214153, Aug. 24, 1984, 84-2 C.P.D ¶ 221. Moreover, we have found a small business concern's price that was 7.2 percent higher than one used for comparison purposes was properly found unreasonable. Saratoga Industries--Reconsideration, B-202698.2, Jan. 2, 1982, 82-1 C.P.D. ¶ 47.

Accordingly, since Modular's offered price was 33 percent higher than that of the large business, we cannot find that the Air Force abused its discretion in dissolving the set-aside.

We deny the protest.

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Harry R. Van Cieve
General Counsel