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The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: Dynalec Corporation  
File: B-224457, B-224020  
Date: November 6, 1986

## DIGEST

1. Where agency fails to advise protester that its bid price is unreasonable or that its bid has been rejected, and merely indicates that invitation for bids has been converted to a negotiated procurement, protester's allegation that it is entitled to an award at its originally offered price is timely.
2. Agency determination concerning price reasonableness is a matter of administrative discretion which will not be questioned unless there is a showing of fraud or bad faith.
3. Cancellation of negotiations with only one source and resolicitation is proper where agency has reasonable basis to believe that resolicitation will result in additional competition.
4. Where procurement is properly canceled the fact that the protester's bid prices have been disclosed does not constitute a basis for denying the government the right to cancel the solicitation.

## DECISION

Dynalec Corporation (Dynalec) protests the cancellation by the Defense Electronics Supply Center (DESC) (Defense Logistics Agency) of the procurement action initiated under invitation for bids (IFB) No. DLA900-85-B-4601 for 5 step-ladder quantities of an electrical headset. Dynalec was the sole participant in the procurement, which was restricted to firms that had qualified their product on a qualified products list (QPL). Dynalec contends that there was no reasonable basis for the cancellation. In addition, Dynalec protests the subsequent issuance of request for proposals (RFP) No. DLA900-86-R-4054 for 6 stepladder quantities of the same headset. Dynalec complains that its competition will have an unfair advantage on the resolicitation because Dynalec's prices were exposed. Also, Dynalec contends that no other firm is a qualified manufacturer for this item.

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We deny the protest.

IFB No. DLA800-85-B-4601 was issued on September 13, 1985. Bid opening, originally scheduled for October 15, was subsequently extended to October 29 in order to permit Telephonics, Inc. (Telephonics), the only firm listed on the QPL besides Dynalec, an opportunity to bid. However, Dynalec submitted the only bid and on November 2, the contracting officer requested the local pricing office to evaluate the reasonableness of Dynalec's bid price of \$140.40 per unit for the prospective award quantity of 19,899 units. Based on the award quantity contemplated, the pricing office recommended a unit price of \$111.33 for the headsets with a maximum unit price of \$136.50. The pricing office recommended that DESC seek a voluntary refund from Dynalec and the contracting officer states that on or about December 6, Dynalec was asked to reduce its unit price, but that Dynalec refused to do so. Subsequently, Dynalec was requested to provide a cost breakdown of its unit price. After reviewing the recommendations of the pricing office and the cost breakdown provided by Dynalec, the contracting officer determined Dynalec's price to be unreasonable and directed the completion of the acquisition through negotiations.

Amendment No. 0001, dated May 14, 1986, was then issued and converted IFB No. DLA900-85-B-4601 from a sealed bid acquisition into a negotiated procurement. In an accompanying letter dated May 15, the contracting officer requested cost data from Dynalec for providing an increased quantity of 46,301 units and Dynalec provided this information on June 1. On June 18, the contracting officer learned that Telephonics had made a firm commitment to bid on future procurements of the item. In view of the prospects for increased competition on the item, the contracting officer decided to cancel the negotiated procurement and Dynalec was advised of this action by letter dated June 24. Dynalec filed a protest with our Office on July 10.

Dynalec argues that the IFB was never canceled since amendment No. 0001 to the IFB and DESC's accompanying May 15 letter never mentioned cancellation or that the Dynalec's bid price was unreasonable. Dynalec contends that it was only in DECS's June 24 letter that it became aware of DESC's intent to cancel the IFB and reject its bid. As a result, Dynalec argues that DESC's actions in canceling the solicitation must be judged in accordance with section 14.404-1(c) of the Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.404-1(C) (1985), which sets forth the acceptable bases for canceling an IFB. Dynalec contends that anticipation of additional competition is not a proper basis for cancellation and that, therefore, DESC's cancellation of the IFB was improper.

Also, Dynalec complains that there was never any indication from DESC that it considered Dynalec's unit price unreasonable, and Dynalec argues that the agency's determination in this regard was made solely in response to Dynalec's protest. Dynalec contends that the FAR requires the agency to make a contemporaneous determination and notify bidders of this decision, and since this was not done, DESC's price reasonableness determination should have no effect. Further, Dynalec states its price of \$140.40 per unit must be considered reasonable since it is only 3.5 percent greater than the \$111.33-136.50 price range calculated by the pricing office.

Dynalec further contends that, even if canceling the IFB was proper, anticipated competition is not a sufficient reason for canceling a negotiated procurement, and there is no reason to expect Telephonics to submit a proposal now when Telephonics refused to do so earlier. Also, Dynalec argues that Telephonics is no longer a qualified manufacturer of the headsets and therefore is ineligible to submit a proposal. Dynalec indicates that the "Defense Standardization and Specification Program" publication SD-6 (1 Nov. 1979) issued by the Office of the Under Secretary of Defense for Research and Engineering, states that a product "will be removed from the QPL" if "the manufacturer has failed or declined to bid on government contracts for the product for 10 consecutive solicitations or for a period of 2 years during which solicitations were issued, whichever is less." Dynalec argues that since Telephonics has not participated in any procurement for this item since 1978, Telephonics has no lawful right to be listed on the QPL. Accordingly, Dynalec contends that there is no reasonable basis for DESC's conclusion that Telephonics will compete since the firm is not eligible.

The agency states that the IFB was properly canceled because of the unreasonableness of the unit price submitted by Dynalec and that Dynalec was on notice of this fact by amendment No. 0001 notifying Dynalec of the conversion to a negotiated procurement. Accordingly, DESC contends that the protest against the cancellation of the IFB and the agency's price reasonableness determination is untimely since it was not filed within 10 working days after Dynalec knew the basis of its protest. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1986). The agency further contends that the cancellation of the subsequent negotiations with Dynalec was reasonable in view of the anticipated increase in competition and that the protest against the cancellation of negotiations has no merit.

Concerning Dynalec's contention that Telephonics is not qualified to be on the QPL, DESC notes that until the agency with control over the QPL listing removes a firm from the QPL, that firm's listing on the QPL is valid. DESC argues that removal from the QPL is discretionary with the Department of the Navy, not mandatory, and even though Telephonics may not have bid on procurements of this item for the stipulated period of time, Telephonics has been properly retained on the list.

Regarding the timeliness of Dynalec's protest that the Navy unreasonably determined its price to be unreasonable and improperly canceled the IFB, our Bid Protest Regulations require that a protest be filed within 10 working days after the basis for protest was known or should have been known, whichever is earlier. 4 C.F.R. § 21.1(a)(2). The FAR, 48 C.F.R. § 14.404-3, states that where it is determined necessary to reject all bids, an agency shall notify bidders that all bids have been rejected and the reasons for such action. When DESC converted the original IFB into a negotiated procurement, it did not expressly reject Dynalec's bid or notify Dynalec that its price was considered to be unreasonable. There is no evidence in the record which contradicts Dynalec's assertion that it was unaware of any determination as to the reasonableness of its price. We therefore believe that Dynalec's protest concerning its failure to obtain a contract at its originally offered price was timely filed within 10 working days after the cancellation of negotiations.

Initially, we note that Dynalec argues that the contracting officer's written determination finding Dynalec's bid price unreasonable should not be considered because it is undated and was not written at the time the decision to cancel was made. Where the contracting officer's written determination to cancel is prepared subsequent to the filing of a protest, such a deficiency is one of procedure and form which does not affect the validity of the cancellation. Ikard Mfg. Co., B-192248, Sept. 22, 1978, 78-2 CPD ¶ 220. Moreover, although Dynalec contends that there is no evidence that price reasonableness formed the basis for the agency's determination to cancel at the time the actual decision was made, we point out that a subsequently enunciated basis for cancellation, which would have supported cancellation had it been advanced originally, is acceptable. John C. Kohler, Co., B-218133, Apr. 22, 1985, 85-1 CPD ¶ 460. Consequently, whether the rationale currently advanced to support cancellation was set forth initially as the reason for cancelling is of no consequence. We will review the record to ascertain whether the information reasonably available at the time the decision was made supports the determination. See Dynateria, Inc., B-211525.2, Oct. 31, 1984, 84-2 CPD ¶ 484.

Our Office has stated that a determination concerning price reasonableness is a matter of administrative discretion which we will not question unless the determination is unreasonable or there is a showing of fraud or bad faith. Mel-Base Indus., B-218015, Apr. 12, 1985, 85-1 CPD ¶ 421. Here, the contracting officer indicates that his determination concerning Dynalec's bid price was based on an analysis by the pricing office, dated November 22, 1985, as well as a cost breakdown provided by Dynalec. The report recommended a unit price of \$111.33 utilizing the last award price as a base, with a maximum price of \$136.50 based on an analysis of past award prices dating back to 1975. In addition, the report showed that Dynalec's current price was substantially higher than the \$101.25 price paid Dynalec under the previous contract for this item and that the prices paid for this item had been decreasing over the past 5 procurements. Based on these facts, the contracting officer states that he considered Dynalec's current bid price unreasonable.

Dynalec disagrees with the analysis and contends that its price is reasonable. Dynalec argues that its price is only 3.5 percent higher than the \$136.50 maximum price which the pricing report indicated could be supported, and that there is no basis for canceling where there is such a slight difference between the government estimate and the actual bid. In addition, Dynalec contends that the pricing report acknowledged that past prices were unrealistically low and, accordingly, Dynalec asserts that the contracting officer's reliance on past prices was unreasonable.

An agency may base its determination concerning price reasonableness upon a comparison with such factors as government estimates, past procurement history or any other relevant factors. Airborne Servs., Inc., B-221894 et al., June 4, 1986, 86-1 CPD ¶ 523. While the maximum recommended price is only slightly lower than Dynalec's bid price, it is also substantially higher than the current estimated unit price of \$111.33 and significantly greater than Dynalec's previous bid. We disagree that the pricing report concluded that past prices were unrealistically low and should not be considered since the report only stated that it may be a situation where competition has driven past prices to an unrealistically low point. In our view, the pricing office clearly considered Dynalec's bid price suspect, and we note that the report stated that discussion of a voluntary refund was perhaps a better alternative than cancellation. We do not believe that the contracting officer was restricted to considering only the upper limit of the price range estimated by the pricing office, and in view of the dramatic price increase over the \$101.25 per unit price paid Dynalec under

the previous procurement and the trend over recent procurements, we cannot conclude that the determination concerning Dynalec's current bid price was unreasonable. Since the cancellation of an IFB is permissible where the only bid received is deemed unreasonable, we find no basis to object to the agency's cancellation of the IFB. See R. S. Bowers Constr. Co., B-208164, Nov. 29, 1982, 82-2 CPD ¶ 482.

We now consider whether the negotiated procurement which was initiated with the issuance of amendment No. 0001 was properly canceled due to the prospects of additional competition on the procurement. Although sole-source procurements may be used where only one known source can meet the agency's needs, it is preferable that procurements be conducted with competition from more than one firm. Worldwide Marine, Inc., B-212640, Feb. 7, 1984, 84-1 CPD ¶ 152. Indeed, it is inappropriate to conduct a sole-source procurement where another competitor exists who could compete on that procurement. Martin Elecs., Inc., B-211406, Apr. 24, 1984, 84-1 CPD ¶ 465. The contracting officer indicates that he was advised by the Competition Advocate's Office that Telephonics had made a firm commitment to compete on future procurements. In view of this firm commitment, the contracting officer concluded that it was in the government's best interest to cancel the current negotiations with Dynalec and resolicit the requirement.

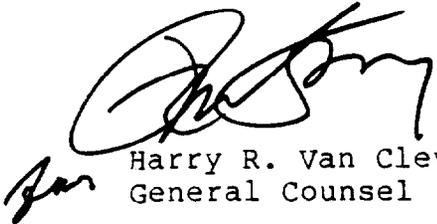
We recognize that Dynalec argues that Telephonics should not be listed on the QPL because it has not bid on this item for over 8 years. In this respect, Paragraph 111.1 of the "Defense Standardization and Specification Program" publication SD-6, cited by Dynalec, does state that "product will be removed from the QPL for reasons considered by the preparing activity to be sufficient" and it does list a bidders failure to bid over a period of time as one reason for removal. However, the reasons set forth therein are merely examples of reasons considered sufficient to remove a product from the QPL and, in our view, do not require an agency to remove a product where the preparing activity does not otherwise find removal is warranted.

We point out that whether a bidder remains a qualified producer involves essentially a matter of business judgment which involves a high degree of discretion on the part of the procuring agency. Elliott Co. et al., B-212897 et al., Jan. 30, 1984, 84-1 CPD ¶ 130. Because removal would create a sole-source situation for Dynalec, we think the contracting officer could reasonably retain Telephonics on the QPL since listing on the QPL does not in any way relieve a bidder from delivering fully compliant items. Accordingly, we think that

the agency properly considered the prospects of additional competition in deciding to cancel the RFP and resolicit, and we find that this constitutes a reasonable basis for the agency's determination to cancel.

Finally, with respect to any prejudice to Dynalec stemming from the disclosure of its prices under the original IFB, we have held that a bidder whose sole bid has been rejected as unreasonable is not prejudiced where that bidder will be able to bid on the resolicitation. To hold otherwise would negate the government's right to cancel solicitations under circumstances permitted by the procurement regulations. Arcwel Corp., B-221380, Mar. 18, 1986, 86-1 CPD ¶ 269.

The protest is denied.

  
Harry R. Van Cleve  
General Counsel