



**The Comptroller General
of the United States**

Washington, D.C. 20548

PL-1

Decision

Matter of: Crown Laundry & Dry Cleaners, Inc.

File: B-224374.2

Date: January 20, 1987

DIGEST

1. Contracting agency's rejection of sole bid for schedule I of the solicitation requirements on the basis of unreasonable price, resulting in cancellation of that portion of the solicitation, was proper where the bid price was significantly higher than the most recent contract price and a price range developed through a market survey and the record does not disclose fraud or bad faith on the part of the contracting agency in reaching this determination. --

2. Protest of agency's alleged failure to include reasonable estimated workload for laundry services concerns an alleged impropriety that was apparent on the face of the solicitation but the protest was not filed before bid opening and is therefore untimely.

DECISION

Crown Laundry & Dry Cleaners, Inc. (Crown), protests the rejection of its all or none bid and the partial award of a contract to Wade Linen Service, Inc. (Wade), under invitation for bids (IFB) No. DABT10-86-B-0070 issued by the Department of the Army (Army) for laundry and dry cleaning services at Fort Benning, Georgia. Crown, the incumbent contractor, objects to the agency's determination that its bid price was unreasonable and challenges the partial award to Wade on the basis that Crown was the low aggregate bidder and should have received the entire award. Finally, Crown also protests the Army's decision to cancel and readvertise the requirements in schedule I of the IFB.

The protest is denied in part and dismissed in part.

The solicitation, issued as a total small business set-aside, contained two bid schedules: schedule I for all laundry and dry cleaning services at the Fort Benning installation

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excluding services for Martin Army Community Hospital, and schedule II for laundry services at Martin Army Community Hospital. Estimated quantities, generally expressed in number of pieces or pounds (dry weight), were provided for each month in the base contract period and 2 option years. The IFB allowed firms to bid on each schedule and provided for separate awards to the responsive, responsible bidder "whose aggregate evaluated price is low for each schedule."

On August 26, bids were received from two firms, as follows:

Bidder	Base Year	Option Year 1	Option Year 2
<u>Schedule I</u>	<u>Aggregate Amount</u>	<u>Aggregate Amount</u>	<u>Aggregate Amount</u>
Crown			
Laundry	\$2,127,303.50	\$2,127,303.50	\$2,127,303.50
Wade Linen	No bid	No bid	No bid

Schedule II

Crown			
Laundry	\$249,826.50	\$249,826.50	\$249,826.50
Wade Linen	\$194,670.00	\$194,670.00	\$194,670.00

The contracting officer determined that with respect to the bids received for schedule II, Wade was the low, responsive bidder and award was made for those services to that firm. With regard to schedule I, the protester submitted the only bid in the total amount of \$2,127,303.50. The contracting officer, in comparing the bid to the current contract for the same services as well as other contract prices for similar services obtained through a market survey, determined that the bid was unreasonably priced. The contracting officer therefore concluded that the Army should reject Crown's bid and cancel the IFB on that basis. Crown was so informed by letter dated September 5 and was further notified of the agency's intent to resolicit the services on an unrestricted basis. This protest followed.

Crown contends that the Army's rejection of its bid was improper because contrary to the contracting officer's determination, its bid price was not excessive but simply reflected the reasonable cost for performing these services at Fort Benning. Since its bid price was reasonable, Crown argues, it was improper for the Army to cancel schedule I of the IFB and issue a new solicitation. Crown further contends that the Army rejected its bid and made an award for the

services under schedule II to Wade despite the fact that Crown submitted the "low aggregate bid." Finally, Crown objects to the Army's refusal to reveal to it the market survey and the elements used to develop the market survey which was used by the contracting officer as a comparative tool.

As a preliminary matter, the Army reports that because it intends to resolicit the requirement and to utilize the results of the market survey for this procurement, it did not release to the protester the market survey and backup data. The market survey and related analysis have been furnished to our Office for consideration in camera.

The agency reports that by its terms, the IFB provided for an award to the bidder whose total evaluated price is "low for each schedule"; therefore, multiple awards were not prohibited by the IFB. Similarly, the IFB did not prohibit all or none bids. The agency points out that Crown elected to submit an all or none bid which as to schedule I was the only bid and as to schedule II was not the lowest abstracted bid. Thus, in its view, Crown was not the low aggregate bidder on either schedule and, based upon the contracting officer's findings, Crown's all or none bid for both schedules was rejected and Wade's low bid on schedule II was accepted.

The Army states that because there were no other competitive bids for schedule I with which to compare Crown's price, the contracting officer compared Crown's bid of \$.595 per piece with the current contract price of \$.268 per piece and found the 122 percent increase "unquestionably not acceptable." The contracting officer then conducted a comprehensive market survey analysis to determine a reasonable price which took into account the fact that a portion of the contract services, i.e., the cleaning and pressing of Battle Dress Uniforms (BDUs) was unique to Fort Benning in that the pressing of BDUs, was not priced in a similar manner at any other Army installation. The contracting officer obtained recent contract prices from four other Army installations with similar services and volume, recognizing the differences for providing the services in government-owned, contractor-operated (GOCO) facilities or in a contractor-owned, contractor-operated (COCO) facility. He also obtained input from government experts and "disinterested contractors" to assign a cost for pressing BDUs. Thereafter, the contracting officer established a price range per piece which, in his view, represented a reasonable price to provide these

services in a COCO facility. In comparing Crown's bid to this price range, the contracting officer determined that Crown's bid substantially exceeded the results of the market survey and therefore concluded that the bid should be rejected and that portion of the solicitation canceled and resolicited.

Crown recognizes that a solicitation may be canceled after bid opening where "only one bid is received and the contracting officer cannot determine the reasonableness of the bid price." See Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.404-1(c)(6) (1985). Crown also recognizes that contracting officers enjoy a wide range of discretion in applying this regulation and that our Office will not disturb a determination of price unreasonableness unless it is unsupported or there is a showing of bad faith or fraud on the part of government officials. See California Scaffold Corp., B-220082.2, Dec. 31, 1985, 85-2 C.P.D. ¶ 729 at 3.

Nevertheless, the protester disputes the agency's finding that its bid price was unreasonable. Crown maintains that the "price comparison methods" used by the contracting officer are inappropriate under the circumstances herein. First, Crown alleges that the difference between its bid and the current contract is attributable in part to Crown's "bidding too low on the prior contract" which resulted in "substantial losses." The protester states that these losses were due in part to:

"erroneous government estimates of work to be performed (government estimates exceeded actual work by more than 29%) which resulted in reductions to the contractor under the adjustment clause of the contract."

Thus, the protester asserts that the costs it actually incurred in performing these services at Fort Benning "are a reliable indication of the reasonable costs of performing the services." Consequently, Crown continues to assert that its bid price under the present solicitation was reasonable. The Army responds that Crown's documented losses under the contract were due in part to deductions for damaged and lost articles in excess of \$420,000. The Army further contends that Crown's allegation that the government overstated its needs by approximately 29 percent is without merit since the estimates were based on the best information available to the government at that time.

To the extent that the protester is challenging the reasonableness of the government's estimated quantities for schedule I of this solicitation this argument is essentially that the IFB was defective because the IFB overstated the government's actual needs--an alleged solicitation deficiency which, under our Bid Protest Regulations, should have been raised before bid opening. 4 C.F.R. § 21.2(a)(1) (1986). Consequently, this issue is untimely and will not be considered.

Next, Crown argues that the market survey, (which was provided to the protester without disclosing the pricing pattern) contains "inherently unreliable data" and the contracting officer's reliance on the results of that market survey renders his determination, that Crown's bid was unreasonably priced, unreasonable. According to the protester, there are significant and unique differences between the laundry services at Fort Benning and any other Army installations which were a part of the survey.

For example, Crown argues that the amount of "press work" at the Fort Benning installation is greater than at any other installation. Related to this argument is the protester's assertion that "it is unlikely that any contracts considered in the market survey" include "the expensive pressing of [BDU's] which is a significant portion of the press work performed at Fort Benning," as well as the cleaning of large volumes of sleeping bags. Additionally, Crown questions whether the contracting officer made any allowances for the difference in cost of performing these laundry services at a GOCO versus a COCO facility. The protester notes that its bid under this IFB was based upon a COCO award.

We have stated that a determination concerning price reasonableness is a matter of administrative discretion involving the exercise of business judgment, which our Office will not question unless the determination is unreasonable or there is a showing of bad faith or fraud. See The W.H. Smith Hardware Co., B-221792, May 9, 1986, 86-1 C.P.D. ¶ 446 at 3. In this regard, a determination concerning price reasonableness may be based upon a comparison with such factors as government estimates, past procurement history, current market conditions, or any other relevant factors, including any which have been revealed by the bidding. Id.; see also Sylvan Service Corp., B-222482, July 22, 1986, 86-2 C.P.D. ¶ 89 at 2-3. In reviewing a contracting officer's

exercise of his broad discretion in this area, we have noted the inexact nature of government estimates. Western Roofing Service, B-219324, Aug. 30, 1985, 85-2 C.P.D. ¶ 255 at 2.

The agency report indicates that the unreasonableness of Crown's price was first determined by using as a base the prior procurement history for these services at this particular Army installation, i.e., the contract price for the most recent contract, which was a COCO-based award to Crown. As we noted previously, this method of comparison revealed that Crown's bid price was 122 percent higher.

We do not find persuasive Crown's arguments that the then current contract should not be used for comparison purposes because the contract price was too low. We have consistently regarded prior procurement history to be a valid and proper method to determine if bid prices received for a similar procurement are reasonable. See Asbestos Abatement of America, Inc., B-221891 et al., May 7, 1986, 86-1 C.P.D. ¶ 441 at 4. Moreover, the fact that there were no other bids with which to compare Crown's sole bid for schedule I provides further support for the price comparison methods used by the contracting officer.

We have examined all data submitted by the Army, including those provided for in camera review and, on the basis of that review, we see no reason to question the method used by the contracting officer in conducting the market survey nor the attendant price analysis. There is evidence in the record that the contracting officer considered all relevant factors, such as the differences between a GOCO- and a COCO-based award and the pressing of BDUs, during the survey.

Although we cannot reveal the exact amount by which Crown's bid exceeded the government estimate, it was substantial, and since the protester has neither alleged nor shown fraud or bad faith, we conclude that the contracting officer's decision to reject Crown's bid and resolicit was reasonable under the present circumstances. Since we find the cancellation and resolicitation to be proper, we need not consider the protester's argument that the resolicitation would be tantamount to sanctioning a prohibited auction.

Accordingly, the protest is denied in part and dismissed in part.

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