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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Free State Reporting, Inc.
File: B-225531.3, B-225532.3
Date: March 6, 1987

DIGEST

Prior decision holding that, after cancellation of sealed bid procurement, award following negotiation at a price higher than the lowest rejected bid is not precluded by FAR, 48 C.F.R. § 15.103(c) unless the cancellation was based on unreasonable prices or collusive bidding, is affirmed on reconsideration.

DECISION

Free State Reporting, Inc. (FSRI) has requested us to reverse our denial of the company's protest in Free State Reporting, Inc., et al., B-225531 et al., Jan. 13, 1987, 87-1 C.P.D. ¶ _____.

FSRI had protested the Social Security Administration's (SSA's) award of contracts to York Stenographic Services (York) and Science and Management Resources (SMR) following negotiations after the cancellation of invitation for bids (IFB) No. SSA-IFB-86-002. FSRI argued that SSA awarded contracts under the negotiated procurement at prices higher than the lowest bid price of a responsible bidder under the IFB in violation of the Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.103(c) (1986). We held that the FAR does not preclude award, following negotiation after the cancellation of a sealed bid procurement, at a price higher than the lowest rejected bid price under the canceled procurement except where the cancellation was based on unreasonable prices or collusive bidding. FAR, 48 C.F.R. § 14.404-1(e)(1). Since the awardees' bids were initially rejected for failure to meet a bid bond requirement, not because of unreasonable prices or price collusion, we found no merit to FSRI's protest.

In its request for reconsideration, FSRI argues that, assuming York and SMR had to buy bid bonds, their negotiated

contract prices substantially exceeded the lowest rejected bid price under the canceled procurement plus applicable bond premiums.

In our prior decision we agreed with SSA's argument that where a bidder has failed to meet a material requirement it would be unreasonable to expect that bidder to not raise its price when submitting a fully compliant offer during negotiations. However, this argument was merely to show the rationale for the difference in treatment under the regulations when IFB's are canceled for different reasons. Since the prohibition against awarding at a higher price following cancellation in FAR, 48 C.F.R. § 15.103(c) does not apply here, there is no limit on the amount by which a bid may be increased during negotiation, as FSI argues in its request for reconsideration.

Our prior decision is affirmed. 4 C.F.R. § 27.12(a) (1986).

Harry R. Van Cleve
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General Counsel