

SHIMAMURA



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Nationwide Roofing & Sheet Metal Company

File: B-234222.2

Date: June 22, 1989

DIGEST

1. Protest that awardee's bid price on resolicitation was unreasonable because it substantially exceeded the government estimate and was only slightly lower than protester's price, which was rejected as unreasonably high under the first solicitation, is denied where the contracting officer reasonably determined, based on a comparison of prices obtained under the two competitions, that the government estimate was inaccurate and that the awardee's price was reasonable since it was unlikely that a lower price could be obtained.
2. The fact that bid prices received on resolicitation also exceeded the government estimate by a considerable margin has no bearing on the propriety of the cancellation of the first solicitation, since the contracting officer had no way of predicting such prices.
3. Protest that solicitation was defective because it specified two different periods of contract performance is untimely since protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening must be filed prior to bid opening.
4. Although estimated quantities in a solicitation for a requirements contract for emergency roof repair services overstated the government's anticipated needs, contracting agency is not required to terminate contract and resolicit where there is no indication in the record that bids would have been different had more accurate estimates been provided.

DECISION

Nationwide Roofing & Sheet Metal Company protests the award of a requirements contract to Command Roofing Company under

045702/138949

invitation for bids (IFB) No. F33601-88-B9058, a resolicitation issued as a small business set aside by Wright Patterson Air Force Base for on-call emergency roof repair services for a base year and four 1-year option periods. Nationwide contends that the Air Force improperly awarded the contract to Command and that the contract should have been awarded to it under the first solicitation for the same requirement. Alternatively, the protester argues that the requirement should be resolicited.

We deny the protest.

The Air Force initially issued IFB No. 33601-88-B-9003 (IFB No. 9003) for roof repair services for a 12-month base period from October 1, 1988 to September 30, 1989, and 4 option years. Five bids were submitted at bid opening, three of which, including the low bid, were rejected as nonresponsive; the remaining two bids, Nationwide's second low bid and another bid, were determined to be unreasonably high in comparison to the government estimate. The contracting officer therefore rejected the bids, canceled IFB No. 9003, and resolicited the requirement. Nationwide's subsequent protest of the cancellation to our Office was denied based on our finding that the contracting officer acted reasonably in canceling the IFB since the protester's bid was substantially higher than the government estimate. Nationwide Roofing & Sheet Metal Co., Inc., B-231895.2, Oct. 28, 1988, 88-2 CPD ¶ 404.

The Air Force issued the new IFB on November 25, 1988, revising the base period for performance shown on the bid schedule from 12 months to 7 months (March 1 to September 30, 1989). Four bidders responded to the resolicitation by bid opening on January 5, 1989. Harold J. Becker Co., Inc., the low bidder at \$573,745 for the base year and 4 option years, was determined to be nonresponsive. Command was selected for contract award based on its \$605,825 second low bid. Nationwide's \$615,048 bid, the same bid the firm submitted in response to the first solicitation, was third lowest. The fourth and highest bid, \$828,718, was submitted by Enterprise Roofing & Sheet Metal Co. The government's estimate for the roof repair services was \$383,000.

Nationwide first contends that the contract was improperly awarded to Command at an unreasonable price since its own price under the first solicitation, which was only slightly higher than Command's price, was rejected as unreasonably high. Nationwide asserts that the first solicitation was improperly canceled and requests that a contract be awarded to it under the first solicitation.

A determination concerning price reasonableness is a matter of administrative discretion that we will not question unless the determination is unreasonable or the protester demonstrates fraud or bad faith on the agency's part. Picker International, Inc., B-232430, Dec. 12, 1988, 88-2 CPD ¶ 583. An agency properly may base a determination of price reasonableness upon comparisons with government estimates, past procurement history, current market conditions, or any other relevant factors, including any which have been revealed in the bidding. See Federal Acquisition Regulation (FAR) §§ 14.407-2-15.805-2.

Here, in our decision on Nationwide's prior protest, we found that the contracting officer reasonably determined that bid prices were unreasonably high based on a comparison with the government estimate which was calculated using unit costs from the then-current year's roof repair program adjusted for inflation. Nationwide Roofing & Sheet Metal, Inc., B-231895.2, supra. However, after two competitions yielded prices considerably in excess of the government estimate, the contracting officer concluded that the government estimate was inaccurate and did not reflect the true cost of the requirement. After determining that Command's price was reasonable since it was unlikely that a lower price could be obtained, the contracting officer awarded the contract to Command, the low, responsive and responsible bidder under the resolicitation.

The contracting officer's comparison of prices obtained under the two solicitations provided a reasonable basis for the determination that the price offered by Command was reasonable. FAR § 15.805-2. Accordingly, we see no basis to question the contracting officer's determination, nor is there any evidence of fraud or bad faith on the part of the contracting officials. Moreover, the fact that bid prices received on the resolicitation also exceeded the government estimate by a considerable margin has no bearing on the propriety of the cancellation of the first solicitation, since the contracting officer had no way of predicting such prices. King Machine Inc., B-218960; B-219377, Aug. 20, 1985, 85-2 CPD ¶ 199. As a result, to the extent that Nationwide challenges cancellation of the first solicitation and the agency's determination that Command's price under the resolicitation was reasonable, the protest is without merit.

Nationwide also contends that the second IFB is defective because it specified two different periods of performance for the base period--7 months in the bid schedule and 9 months elsewhere in the solicitation. The 7-month and

9-month performance periods were clearly set forth in the IFB. Since our Bid Protest Regulations require that protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening be filed prior to bid opening, 4 C.F.R. § 21.2(a)(1) (1988), Nationwide should have filed its protest by the January 5 bid opening date. Nationwide's protest of the discrepancy in the performance period, filed on May 5, therefore is untimely.

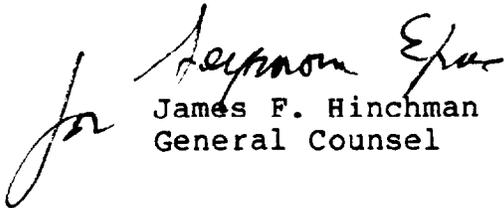
Finally, Nationwide contends that it was prejudiced by the Air Force's decision to reduce the work estimates in the IFB after the contract was awarded to Command. As explained above, the initial IFB called for a 12-month base period. While the bid schedule in the second IFB was changed to show a 7-month base period, reflecting the delay resulting from cancellation of the initial IFB and resolicitation, the Air Force did not revise the work estimates in the second IFB. Thus, while the base contract period was reduced from 12 months to 7 months, the work estimates were not reduced correspondingly; the second IFB contained the same estimates as the initial IFB. Prior to awarding the contract on March 1, however, the Air Force reduced the estimated quantities for the base period to reflect the remaining 7-month period of performance (March 1 to September 30, 1989).

The protester alleges that it was prejudiced by the change in the estimates after contract award because its bid was based on the assumption that the 12-month estimated requirements set out in the initial IFB and unchanged in the second IFB had to be performed during the 7-month period specified in the second IFB. According to Nationwide, this reduction in the performance period without a corresponding reduction in the estimated work forced it to assume the increased risk of overtime and weekend work associated with the accelerated schedule. Nationwide maintains that if it had known that the estimated quantities would be reduced to reflect a 7-month rather than a 1-year requirement, it would have reduced its unit prices to reflect the reduced overhead and reduced risk of overtime and weekend work associated with the lesser quantity of work.

We find that the protester's contention that it would have changed its bid had the work estimates been reduced is not supported by the record. Specifically, except for minimal annual increases (less than \$200 per year), Nationwide bid the same amount for the base year and each of the option years. In our view, the fact that Nationwide's bid for the base year was not higher than its bids for the 4 option years is inconsistent with its assertion in the protest that its costs were higher for performing the estimated work in

7 rather than 12 months. Nationwide responds that it did not increase its base year bid to reflect the increased costs it expected to incur because its prices had already been revealed at bid opening under the initial IFB. We find this contention, standing alone, insufficient to show that Nationwide would have significantly changed its bid had the work estimates in the IFB been revised. Accordingly, although the Air Force should have amended the IFB before bid opening to reflect the accurate work estimates, we do not think that Nationwide has shown that it was prejudiced by the Air Force's failure to do so.

The protest is denied.

A handwritten signature in cursive script, appearing to read 'James F. Hinchman', is written over the typed name and title.

James F. Hinchman
General Counsel