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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Vitronics, Inc.

File: B-237249

Date: January 16, 1990

DIGEST

Award to large business which submitted low quote on small business-small purchase set-aside was improper, where the procuring agency did not specifically determine, or have any evidence to indicate, that the second low quote from a small business, which was only 6 percent higher than the price of the large business awardee, was unreasonable.

DECISION

Vitronics, Inc., protests the issuance of a purchase order to Concurrent Computer Corporation, under request for quotations (RFQ) No. ICC-89-Q-0002 issued, as a small business set-aside under small purchase procedures, by the Interstate Commerce Commission (ICC) for the maintenance and repair of electronic equipment used by the ICC to prepare its payroll. Vitronics complains that the award was made to a large business.

We sustain the protest.

The ICC received three quotations in response to the RFQ, which was issued pursuant to the small business-small purchase set-aside procedures of Federal Acquisition Regulation (FAR) § 13.105(d)(3) (FAC 84-28). Concurrent Computer, a large business, submitted the lowest quote of \$19,384, while Vitronics, a small business, was second low at \$20,604. The ICC made award to Concurrent Computer, as the low offeror^{1/}, pursuant to FAR § 13.105(d)(3), noting that the successful offeror had performed the work in prior

^{1/} While the protest was pending, the ICC determined that because of urgent and compelling circumstances significantly affecting the interests of the United States, it would not withhold award pending our decision. 31 U.S.C. § 3553(c) (Supp. IV 1986); 4 C.F.R. § 21.4(a) (1989).

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years. FAR § 13.105(d)(3) provides that the contracting officer may cancel a small business-small purchase set-aside and complete the purchase on an unrestricted basis if a reasonable quotation from a responsible small business is not received. See W.S. Spotswood & Sons, Inc., B-236713.2, Nov. 16, 1989, 89-2 CPD ¶ ____.

Vitronics contends that its quote, which was only \$1,220, or 6 percent, higher than the awardee's quote, was reasonable and that it is entitled to award as the low, responsible small business offeror.

A determination of price reasonableness for a small business set-aside is within the discretion of the procuring agency, and we will not disturb such a determination unless it is clearly unreasonable or there is a showing of fraud or bad faith on the part of contracting officials. Flagg Integrated Sys. Technology, B-214153, Aug. 24, 1984, 84-2 CPD ¶ 221. In making the determination, the contracting officer may consider such factors as the government estimate, the procurement history for the supplies or services in question, current market conditions, and the "courtesy bid" of an otherwise ineligible large business bidder. Id. Furthermore, in view of the congressional policy favoring small businesses, contracts may be awarded under small business set-aside procedures to small business firms at premium prices, so long as those prices are not unreasonable. R.G. Dunn & Assocs., Inc., B-230831; B-230832, July 8, 1988, 88-2 CPD ¶ 28. In this regard, we have noted that a small business bidder's price is not unreasonable merely because it is greater than the price of an ineligible large bidder, since there is a range over and above the price submitted by the large business that may be considered reasonable in a set-aside situation. The determination of whether a particular small business price premium is unreasonable depends upon the circumstances of each case. See Advanced Constr., Inc., B-218554, May 22, 1985, 85-1 CPD ¶ 587 (contracting officer in a set-aside procurement properly found reasonable a small business bid which was more than 11 percent higher than large business courtesy bid); Browning-Ferris Indus., B-209234, Mar. 29, 1983, 83-1 CPD ¶ 323 (small business bid which was 36 percent higher than large business bid was found reasonable).

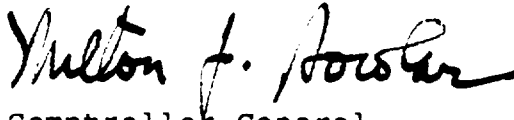
Here, the ICC has not stated that Vitronics' quote is unreasonable and has provided us with no explanation for its decision to make award to Concurrent Computer other than to cite FAR § 13.105(d)(3) and state that Vitronics' quote is higher than the awardee's quote. There is no indication in the record that the ICC, in making its determination, considered prior procurement history, current market

conditions or a government estimate. Under the circumstances, we find that a 6 percent price differential is not so large as to make Vitronics' price per se unreasonable. Absent any explanation or determination by the ICC, we conclude that the contracting officer's determination to make award to the lower priced large business was unreasonable. See W.S. Spotswood & Sons, Inc., B-236713.2, supra.

We sustain the protest and recommend that if the ICC finds Vitronics otherwise eligible for award, it should terminate Concurrent Computer's contract and make award to Vitronics.

Under the circumstances, the protester is entitled to the costs of filing and pursuing the protest. Bid Protest Regulations, 4 C.F.R. § 21.6(d)(1). Vitronics should submit its claim for such costs directly to the ICC. 4 C.F.R. § 21.6(e).

The protest is sustained.

for 
Comptroller General
of the United States