

C. Sklarew



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Adrian Supply Co.
File: B-240871; B-240872
Date: December 21, 1990

Bob Stormberg for the protester.
Craig R. Schmauder, Esq., and Linda Selinger, Esq.,
Department of the Army, for the agency.
Christina Sklarew, Esq., Andrew T. Pogany, Esq., and
Michael R. Golden, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Contracting Officer's decision to cancel line item of invitation for bids based on unreasonableness of bid prices was proper where low bid for the item exceeded government estimate by more than 100 percent.

DECISION

Adrian Supply Co. protests the partial cancellation of invitation for bids (IFB) No. DACA87-90-B-0001, which was issued by the Army Corps of Engineers for electrical equipment components for a high altitude electromagnetic pulse filter test stand, and the resolicitation of one of these components under request for proposals (RFP) No. DACA87-90-R-0106.

We deny the protest.

The IFB sought bids for eight items, and provided for multiple awards. Contracts were awarded for five of the items, including three contracts awarded to Adrian. No contracts were awarded for the remaining three items because the contracting officer determined that the prices submitted for these were unreasonable in comparison with the independent government estimate. Only one of these, a 750-Kilowatt, 480-Volt Load Bank identified as line item No. 0005, remains at issue here. Adrian's bid, which was the lower of the two bids that the Army received for the load bank, was more than twice the government estimate for this item. The contracting officer allowed the bids for this item to expire and decided to resolicit for the item under negotiated procedures. When the agency did so, using essentially the same specification, this protest followed.

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Adrian contends that the Army violated Federal Acquisition Regulation (FAR) § 14.404-1 when it allowed bids to expire rather than formally canceling the IFB. The protester argues that the use of this "bid expiration technique" results in a cancellation without justification. Adrian also argues that certain procedural omissions, primarily in connection with the requirement for a written determination of price unreasonableness and notice to all bidders of the cancellation, rendered the cancellation improper. We disagree.

Where a contracting officer deliberately allows the bid acceptance period to expire without making any award in order to effect the cancellation of the solicitation, we view this as a constructive cancellation which we will review under the same standards as we would any other cancellation. See US Rentals, B-238090, Apr. 5, 1990, 90-1 CPD ¶ 367. A procedural inadequacy, however, such as the absence of a written determination, would not, by itself, provide a basis to sustain a protest where the cancellation is in fact warranted. See Feinstein Constr., Inc., B-218317, June 6, 1985, 85-1 CPD ¶ 648.

The protester contends that it was improper for the contracting officer to determine that the two bids received for the load bank were unreasonable based solely on a comparison of these prices with the government estimate. Adrian questions the validity of the government estimate and contends that, in light of the fact that both of the bids far exceeded the estimate, the contracting officer should not have continued to rely on the estimate. Adrian contends that the basis for the price reasonableness determination should have been the adequacy of the competition received, instead of a comparison with the government estimate.

Before awarding any contract, a contracting officer is required to determine that the price at which the contract would be awarded is reasonable. FAR § 14.407-2. The FAR provides that the contracting officer is responsible for selecting and using whatever price analysis techniques will ensure a fair and reasonable price. See id.; FAR § 15.805-2. One of those techniques is a comparison of the prices received with the independent government estimate. FAR § 15.805-2(e). Here, the record shows that the government estimate had been prepared by an experienced electrical engineer and was based on information obtained from two of the principal manufacturers of the product involved. (Because it was the first time this equipment was being procured for this activity, there was no procurement history upon which the contracting officer could rely.) When bids were opened and it was apparent that they far exceeded the government estimate, the contracting officer reviewed the estimate and concluded that it was nonetheless reasonable. He relied on the electrical

engineer, who reported that he believed the quotes from the two leaders in the industry were a valid indicator of price reasonableness and that the competition only provided a basis for a slight upward adjustment of the estimate. We do not find the contracting officer's decision to rely on the estimate unreasonable.

An IFB may be canceled after bid opening only when there is a cogent and compelling reason to do so. FAR § 14.404-1(a)(1). When all otherwise acceptable bids received are at unreasonable prices, the FAR specifically permits canceling a solicitation after bid opening. FAR § 14.404-1(c)(6). In this regard, a determination concerning price reasonableness properly may be based on the government estimate alone. Harrison W. Corp., B-225581, May 1, 1987, 87-1 CPD ¶ 457. We have found cancellation to be justified where the low bid exceeded the government estimate by as little as 7.2 percent. See Harrison W. Corp., B-225581, supra. Since the only bids received here were 100-200 percent higher than the government estimate, we believe the contracting officer's decision to cancel the solicitation was reasonable. We point out, in this connection, that we do not necessarily consider the participation of two bidders to be adequate competition for establishing price reasonableness, see, e.g., EMSA Ltd. Partnership, B-237846, Mar. 23, 1990, 90-1 CPD ¶ 326, nor do we find any legal requirement that the contracting officer base his price reasonableness determination on the competition alone, especially when he has what he reasonably believes to be a valid government estimate.

Adrian also argues that cancellation of the IFB after bid opening and the resultant exposure of its bid price created an impermissible auction under the resolicitation. We again disagree. FAR § 14.404-1(c)(6) specifically authorizes cancellation after bid opening where the prices are found to be unreasonable. Here, there is no showing that the contracting officer canceled the IFB for the purpose of creating an auction. Further, although any resolicitation after rejection of unreasonably priced bids allows firms to bid with knowledge of the prior bid prices, the second competition also gives bidders which submitted unreasonable prices, like Adrian, another opportunity to bid at a reasonable price. See Daniels Mfg. Corp., B-223475.2, Jan. 13, 1987, 87-1 CPD ¶ 51.

The protest is denied.


for James F. Hinchman
General Counsel