Gorczycki

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Comptroller General
of the United States

Washington, D.C. 20548

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# Decision

**Matter of:** Sigma West Corporation

**File:** B-247916

**Date:** July 20, 1992

Paul Wien for the protester.
Adam C. Striegel, Esq., General Services Administration, for the agency.
Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

**DIGEST**

Agency reasonably determined that the protester's lowest responsive bid under an invitation for bids for tool kits was unreasonably priced based solely on a comparison with a lower priced nonresponsive bid, where there is no other legitimate benchmark available to judge the current reasonable market price, inasmuch as the government estimate in the particular case should be accorded little weight since it is based upon the prices of the protester, which has been the only supplier of the tool kits for 8 years, and the defect in the nonresponsive bid has a negligible impact on price.

**DECISION**

Sigma West Corporation protests the cancellation of invitation for bids (IFB) No. 6FEC-F3-91F3A2-S by the General Services Administration (GSA), for mason and concrete tool kits, and the decision to convert the acquisition to a negotiated procurement. Sigma argues that GSA improperly determined that Sigma's bid was unreasonably priced.

We deny the protest.

GSA issued the IFB on December 27, 1991, for 82 tool kits and received two bids on January 29, 1992. Steel and English Industrial Supply was the apparent low bidder with a bid of $814.95 per tool kit. Sigma, the only other bidder, bid $917.23 per tool kit.[1] After reviewing the bids, the

[1]The IFB permitted bidders to submit bids based on freight on board (FOB) origin, FOB destination, or both. Steel and (continued...)

contracting officer rejected Steel and English's bid as nonresponsive for bidding one unacceptable tool.[2]

The contracting officer proceeded to review Sigma's bid for price reasonableness by comparing it to two benchmark prices: (1) Steel and English's bid and (2) a price estimate prepared by GSA after bid opening. GSA prepared this estimate by applying Sigma's overhead and profit percentages--obtained from a pre-award audit of Sigma for a previous procurement--to GSA's estimated cost of the tool kit, and then adding a unit cost for freight. The contracting officer found Sigma's bid to be 12.5 percent higher than Steel and English's bid and 12.6 percent higher than the GSA estimate of $801.13. Based on these price comparisons, the contracting officer determined that Sigma's bid was unreasonable. Subsequently, GSA issued a Findings and Determinations canceling the IFB due to the absence of a reasonably-priced, acceptable bid and converting the acquisition to a negotiated procurement pursuant to Federal Acquisition Regulation (FAR) §§ 14.404-1(c)(6), 14.404-1(e)(1).

Once bids have been opened, award must be made to that responsible bidder who submitted the lowest responsive bid, unless there is a compelling reason to reject all bids and cancel the IFB. FAR § 14.404-1(a)(1). Such a compelling reason to cancel the IFB exists when it is determined that all otherwise acceptable bids received are at unreasonable prices. FAR § 14.404-1(c)(6). If an IFB is canceled due to unreasonable prices, the agency may complete the acquisition through negotiation if properly authorized in the determination to cancel the IFB. FAR § 14.404-1(e)(1).

An agency's determination of price reasonableness involves the exercise of broad discretion on the part of the contracting officer, which our Office will not question,

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[1](...continued)
English bid on both bases, and Sigma bid only on an FOB destination basis. GSA evaluated the bids on the FOB destination basis.

[2]The IFB solicited tools comprising the tool kits on a "brand name or equal" basis. GSA determined that one of the tools in the kit bid by Steel and English was not an equal of the brand name tool specified in the IFB and, thus, rendered the bid nonresponsive. GSA estimated the cost per kit of the tool to be less than $3.

unless it is clearly unreasonable or there is a showing of fraud or bad faith on the part of the contracting official. Sylvan Serv. Corp., B-222482, July 22, 1986, 86-2 CPD ¶ 89. We have found it proper for an agency to base a price unreasonableness determination upon a comparison with such factors as government estimates, past procurement history, current market conditions, or any other relevant factors, including those which have been revealed by the competition received. FAR §§ 14.407-2, 15.805-2; Sylvan Serv. Corp., supra.

Sigma contends that GSA's determination was unreasonable because it was based substantially on GSA's erroneous cost estimate. Although our review of the record indicates that the GSA estimate was erroneous in some respects, we do not find unreasonable GSA's determination that Sigma's price was unreasonably high. In this particular case, GSA's estimate, even with the apparent errors corrected, should be accorded little weight in determining price reasonableness since it was substantially based on Sigma's previous prices for these kits. Over the previous 8 years, Sigma has been the only supplier of the tool kits, and Sigma's prior prices may not be reasonable indicators of the reasonable market price because of its dominant market position. Therefore, an estimate compiled using Sigma's pricing data from previous procurements may not be the best evidence of the current reasonable market price where competition exists. Under the circumstances, a current competitor's price, even though a nonresponsive bid, is a significantly better indicator of the market price and, thus, of price reasonableness. See Sylvan Serv. Corp., supra. Comparison of a bid price with prices of other bids submitted in response to an IFB is an acceptable means of price analysis. FAR §§ 14.407-2(a), 15.805-2(a). Although a contracting agency should exercise caution when using a nonresponsive bid as the only benchmark of price reasonableness, primary reliance on a nonresponsive bid is appropriate when other methods of determining current market price are not reasonably available. See Theatrical Elects. Corp., B-200361, Feb. 11, 1981, 81-1 CPD ¶ 93.

Here, Steel and English's bid was rejected because one tool in its bid did not qualify as an equal of the brand name tool specified. The specified tool has an estimated cost of less than $3. Thus, we think that this bid defect has a negligible impact on price; therefore, it is reasonable to conclude that Steel and English seriously wished to be bound by its bid. Given the dubious reliability of the government estimate in this case, the agency could reasonably determine that Sigma's bid price is unreasonably priced because it exceeded Steel and English's bid by 12.5 percent. Western Filter Corp., B-247212, May 11, 1991, 92-1 CPD ¶ 436. Since Sigma's price was reasonably found unreasonable, the agency had a compelling reason to cancel the IFB and solicit new bids.

The protest is denied.

Robert P. Murphy
for James F. Hinchman
General Counsel