



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: General Metals, Inc.
File: B-248446.3
Date: October 20, 1992

Karl Dix, Jr., Esq., Smith, Currie & Hancock, for the protester.
Robert L. Mercadante, Esq., Defense Logistics Agency, for the agency.
Tania L. Calhoun and Andrew T. Pogany, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly canceled small business-small purchase set-aside, and determined to recompete the purchase on an unrestricted basis, where the lowest eligible small business quote exceeded the lower priced quote from an ineligible quoter by 14 percent; in absence of other indicators, a current competitor's price, even though an ineligible quote, is an appropriate indicator of the current market price.

DECISION

General Metals, Inc. (GMI) protests the corrective action proposed by the Defense Logistics Agency (DLA) in response to two earlier protests filed by GMI.¹ The agency proposes to cancel a purchase order it awarded to Engineering Metals Company (EMCO) under request for quotations (RFQ) No. DLA500-91-Q-UQ20, issued for 140 feet (2,702 pounds) of hexagon, forged alloy steel bar. The agency further proposes to recompete the requirement under a new solicitation on an unrestricted basis because it found the price of the next low quoter, GMI, unreasonable. GMI argues that DLA's decision that its price was unreasonable had no substantial basis and that, upon cancellation of the purchase order, the agency should award the contract to it rather than recompete the requirement.

We deny the protest.

¹The prior protests, B-248446 and B-248446.2, were both dismissed as academic based on the agency's decision to take corrective action.

The agency received four quotes by the October 21, 1991, date for submission of quotes established by the RFQ, which was issued pursuant to the small business-small purchase set-aside procedures of Federal Acquisition Regulation (FAR) § 13.105. The RFQ also incorporated by reference the clause set forth at FAR § 52.219-4, which, among other things, required the products furnished under the contract to be manufactured or produced by domestic concerns. EMCO submitted the low quote of \$134 per foot, but offered a foreign product. GMI's quote of \$152 per foot, based on supplying a domestic product, was second low. Two other small businesses submitted quotes of \$162 per foot and \$166 per foot, respectively, based on supplying domestic products. The agency had not prepared a government estimate.

The contracting officer proceeded to review GMI's low, domestic quote for price reasonableness by comparing it with EMCO's foreign quote, and found that GMI's quote was 14 percent higher than EMCO's quote. Based on this price comparison, the contracting officer, with the concurrence of the resident Small Business Administration (SBA) representative, found GMI's price to be unreasonable and further determined to award the contract to EMCO under FAR § 13.105(d)(3), which authorizes the cancellation of a small business-small purchase set-aside and the completion of the purchase on an unrestricted basis if the agency does not receive a reasonable quotation from a small business. GMI protested the award to EMCO to our Office on April 23 and again on May 11; on June 8 the agency decided to cancel the purchase order to EMCO and to recompete the requirement. Our Office dismissed the earlier protests as academic, and GMI filed the instant protest of the agency's corrective action.

GMI contends that its quote was reasonable and that it is entitled to award as the low, responsible small business quoter. It argues that the basis of the contracting officer's decision as to price reasonableness was solely the difference between the quotes of EMCO and GMI, and that the mere comparison of the two quotes provides an insufficient basis upon which to declare GMI's price to be unreasonable.

The contracting officer has discretion to determine price reasonableness in a small business or other set-aside, and we will not disturb such a determination unless it is unreasonable. Vitronics, Inc., 69 Comp. Gen. 170 (1990), 90-1 CPD ¶ 57. The record shows that the basis of comparison in the determination that GMI's price was unreasonable was the lower quote of EMCO. While EMCO's quote was ineligible for award because its offer of a foreign product did not comply with FAR § 52.219-4, the low quote of an otherwise

ineligible offeror is one factor that the contracting officer can consider in making a price reasonableness determination. See Sletager, Inc., B-240789.6, Oct. 11, 1991, 91-2 CPD ¶ 328; American Imaging Servs., 69 Comp. Gen. 625 (1990), 90-2 CPD ¶ 51.

In arguing that a comparison between the quotes of GMI and EMCO is insufficient, GMI cites our decisions concluding that the fact a next low quote may be much higher than the lower quote of an otherwise ineligible quoter does not necessarily establish price unreasonableness. E.g., Taylor Assocs., B-216110, June 3, 1985, 85-1 CPD ¶ 625. However, one of the factors that a contracting officer may consider in making a price reasonableness determination is the current market climate. See FAR § 13.106(c)(1); Western Filter Corp., B-247212, May 11, 1992, 92-1 CPD ¶ 436. A current competitor's price, even though an ineligible offer, may be an appropriate measure of the current market price. See Sigma West Corp., B-247916, July 20, 1992, 92-2 CPD ¶ 31 (agency reasonably determined that lowest eligible small business price was unreasonable based solely on comparison with lower priced nonresponsive bid where government estimate was unreliable). There is nothing in the record to suggest that EMCO's quote was artificially low in order to raise questions about the prices of qualified small business bidders or was otherwise not submitted in good faith. In the absence of other methods of determining current market price, the agency's reliance on EMCO's ineligible quote as the benchmark of price reasonableness was appropriate.

We believe that the agency, with the concurrence of the SBA representative, could reasonably find that GMI's quote is unreasonably priced because it exceeded EMCO's bid by 14 percent. Building Maint. Specialists, Inc., B-186441, Sept. 10, 1976, 76-2 CPD ¶ 233; L. White Constr. Co./Ansley-Sheppard-Burgess Co., B-245916, Feb. 3, 1992, 92-1 CPD ¶ 138; North Am. Signal Co., B-190972, May 19, 1978, 78-1 CPD ¶ 387; Saratoga Indus.--Recon., B-202698.2, Jan. 22, 1982, 82-1 CPD ¶ 47 (agency properly found small business price unreasonable, where it exceeded the government estimate or large business price by 7.2 percent, 15 percent, 16 percent, and 9.6 percent, respectively). Consequently, the agency properly canceled the small business set-aside.

The protest is denied.


for James F. Hinchman
General Counsel