Fangman 148417

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

Decision

Matter of: White Storage and Retrieval Systems, Inc.

File: B-250133

Date: January 12, 1993

Steven B. Wiley for the protestor.
Maj. Bradley S. Adams, Esq., Department of the Air Force, for the agency.
Karin K. Fangman, Esq., and Elizabeth S. Woodruff, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency properly canceled a total small business set-aside, and determined to recompete the purchase on an unrestricted basis, where the sole eligible small business price exceeded the lowest priced offer from an ineligible offeror by 18 percent.

2. Where solicitation advised that award may be based on initial offers, the contracting officer had no obligation to hold negotiations with offeror.

DECISION

White Storage & Retrieval Systems, Inc., protests the Air Force's cancellation of request for proposals (RFP) No. F19617-92-R0002, a total small business set-aside, and the decision to issue an unrestricted RFP. White, a small business, argues that the cancellation of the small business set-aside was improper and that the Air Force failed to properly inquire into the reasonableness of White's price.

We deny the protest.

The RFP was issued by Westover Air Force Base, Massachusetts on February 21, 1992, for the purchase of a high density vertical carousel for material storage and retrieval. Proposals were received from White and two other offerors. On July 1, 1992, White requested a size determination ruling for the two other offerors. On July 24, 1992, the Small Business Administration determined that both companies were other than small businesses for purposes of this procurement because they proposed to furnish carousels manufactured by large businesses. On August 11, 1992, the Air Force

contracting officer rejected these two company's proposals as nonresponsive, leaving White as the sole offeror.

The contracting officer reviewed White's proposal for price reasonableness by comparing it with the lowest offer received. The contracting officer found that White's price was 18.1 percent higher than the lowest ineligible offer. Based on this price comparison, the contracting officer was unable to determine that White's offer was reasonable. On August 21, 1992, the contracting officer notified White that the Air Force was canceling the set-aside and would resolicit on an unrestricted basis. This protest followed.

White argues that there was no basis for cancellation of the solicitation and that the agency should have conducted negotiations with White to establish a reasonable price. Specifically, White asserts that its price was reasonable as could have been determined by certified pricing data or by comparing its bid price to its GSA Federal Supply Schedule price or to its 1990 price list. White does not challenge the comparison of its price with that of the ineligible offeror.

The agency responded that the solicitation placed offerors on notice that it intended to award a contract without conducting discussions and that it had no obligation to conduct negotiations. The agency also asserts that in order to make a proper price comparison it is not required to seek certified pricing data regarding the protester's cost. Finally, the agency notes that the Federal Supply Schedule referenced by the protester covered a piece of equipment different from that solicited and, thus, was not a proper comparison. The protester has not disputed this representation.

Under Federal Acquisition Regulation (FAR) § 19.506(a), a contracting officer may withdraw a set-aside before award based upon a determination that award to a small business concern would be detrimental to the public interest (e.g., because of unreasonable price). The contracting officer has the discretion to determine price reasonableness in a small business set-aside, and we will not disturb such a determination unless it lacks a rational basis or there is a showing of fraud or bad faith on the part of the contracting officer. American Imaging Servs., 69 Comp. Gen. 625 (1990), 90-2 CPD ¶ 51. In making a determination of price reasonableness, the contracting officer may consider pricing history, government estimates, current market conditions, or any other relevant factors revealed by the bidding, including prices submitted by an otherwise ineligible large business. General Metals, Inc., B-248446.3, Oct. 20, 1992, 92-2 CPD ¶ 256.

Under FAR § 15.804-2(a)(2), the Air Force contracting officer was not required to request certified pricing data from White. For contracts between $25,000 and $100,000, as is the case here, this section permits such data to be required only where the necessity can be justified. Generally, certified pricing data is necessary when a contracting officer must determine whether an offeror's costs are reasonable. The inquiry into cost reasonableness is separate and distinct from the inquiry into whether an offeror's price is reasonable. Assuming that a cost analysis was deemed necessary and that the contracting officer determined that White's costs were reasonable, this determination would have proven irrelevant in light of the Air Force's determination that White's price was unreasonable. A determination of cost reasonableness does not eliminate the requirement to ensure price reasonableness. See FAR § 15.805-1(b). Since the Air Force properly determined that White's price was unreasonable, an inquiry as to whether it's costs were reasonable would have been pointless.

Furthermore, the contracting officer was under no obligation to conduct discussions with White. The solicitation advised all offerors that the government intended to make award on the basis of initial proposals without holding discussions, unless discussions were determined to be necessary. For this reason, the solicitation specifically warned offerors that initial proposals should contain the offeror's best technical and price terms. There is no obligation on a contracting agency to negotiate where the RFP specifically instructs offerors to provide their best terms in their initial offers. See generally Twigg Aerospace Components, B-236332, Nov. 21, 1989, 89-2 CPD ¶ 485.

The Air Force determined that the differential between White's proposal and the lowest ineligible proposal was so significant that it was unlikely that negotiations would result in a reasonable price. There was nothing in White's proposal which would reasonably indicate to the agency that White might have significantly lowered its price. Even in its protest White never asserts that it would lower its price in negotiations, but rather argues that its price is reasonable. Therefore, the record supports the contracting officer's determination that negotiations would not result in a reasonable price. On this basis, it was reasonable for

the Air Force to conclude that it should seek additional competition. See Tracore Dev. Inc., B-231774; B-231778, July 20, 1988, 88-2 CPD ¶ 66.

The protest is denied.

James F. Hinchman
General Counsel