



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Bay Cities Refuse Service, Inc.

File: B-250807

Date: February 17, 1993

John F. Nolan, Esq., S. Katelin Ryan, Esq., and Christopher W. Sweeney, Esq., Gaw, Van Male, Smith & Myers, for the protester.
Barry Adams, Esq., Anderson, Zeigler, Disharoon & Gray, for Industrial Carting, an interested party.
Bobby G. Henry, Esq., and Brett Bacon, Esq., Department of the Army, for the agency.
Paul E. Jordan, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly canceled solicitation after bid opening on the basis that all otherwise acceptable bids were unreasonable in price where the low responsive bid exceeded both the government estimate and the current contract by a significant amount.

DECISION

Bay Cities Refuse Service, Inc. (BCRS) protests the Department of the Army's rejection of all responsive bids received under invitation for bids (IFB) No. DAKF01-92-B-0064. The Army states that it rejected the bids because the prices were unreasonably high. BCRS contends that the Army's decision to reject the bids and convert the procurement to a negotiated one was unreasonable.

We deny the protest.

The Army issued the IFB on August 28, 1992, for labor, materials, and equipment necessary to collect, remove, and dispose of refuse from family housing and administrative areas at the Presidio of San Francisco and four subposts.

The IFB contemplated a requirements contract and provided estimated quantities for the base year and a single option year.¹ Bidders submitted unit and extended prices based on the IFB estimates for 18 line items.

The Army found BCRS' total bid unreasonably high, although BCRS' prices were considered reasonable for all line items but one; line item 0001, family housing quarters collection. This line item involves the weekly pickup of some 2,623 32-gallon trash containers at 874 housing units. In a year's time this amounts to emptying 136,396 separate containers, and represents a significantly reduced obligation from the comparable line item under the fiscal year 1992 (FY 92) contract. Under the FY 92 contract, the family housing line item included 885 housing units (approximately 138,268 containers per year) plus 76 dumpsters, ranging in size from 2 cubic yards (CY) to 5 CY, to be emptied one time per week. Under the current solicitation, the dumpsters are included under other line items.

BCRS, the incumbent contractor², and Industrial Carting submitted the only bids by the September 28 bid opening date. BCRS' bid of \$775,036 was low. However, in reviewing the bids, the contracting officer concluded that both were unreasonably high since they substantially exceeded the Army's independent government estimate (IGE). As noted above, the contracting officer found in particular that BCRS' bid for line item 0001 significantly exceeded both the IGE and Industrial's bid for this item. The contracting officer rejected both bids as unreasonably high and notified the bidders of his decision to complete the procurement under negotiated procedures. Upon receiving the notice, BCRS filed this protest. BCRS is currently performing refuse collection under a 6 month extension of the FY 92 contract.

An IFB may be canceled after bid opening only when there is a cogent and compelling reason to do so. Federal Acquisition Regulation (FAR) § 14.404-1(a)(1). A finding that all otherwise acceptable bids received are at unreasonable prices provides such a reason. See FAR § 14.404-1(c)(6). A

¹The requirements contract is apparently designed to facilitate contract administration as the Presidio is gradually closed by 1994.

²BCRS has served as the refuse contractor at the Presidio since 1985, and served as the subcontractor for all Presidio family housing from 1972 to 1985.

determination of price reasonableness is within the discretion of the contracting agency and will not be disturbed unless the determination is unsupported or there is a showing of fraud or bad faith on the part of the contracting officials. Rolette Meats & Distrib., Inc., B-234383, June 5, 1989, 89-1 CPD ¶ 525, aff'd, B-234383.2, Aug. 2, 1989, 89-2 CPD ¶ 96.

BCRS contends that the Army lacked a compelling reason for rejecting its low bid because the determination was based on a flawed IGE and improper consideration of the FY 92 contract. BCRS argues that a proper consideration of changes in service and cost increases over the FY 92 contract establishes that its rates are reasonable. From our review of the record, including the IGE, the FY 92 contract, and the current solicitation, we find no basis to disturb the agency's determination that the bids were unreasonably high.

In reviewing the bids, the Army found that BCRS' base year bid of \$755,036, and Industrial's base year bid of \$867,984, both significantly exceeded the IGE.³ In addition, BCRS' bid of \$225,053.40 for line item 0001 (a unit price of \$1.65 per container) significantly exceeded the agency's IGE for this item, and Industrial's bid for the same item: \$92,749.28 (a unit price of \$0.68 per container). Further, BCRS' price for line item 0001 was significantly higher than its \$96,000 (\$0.59 per 32 gallon container) price under the FY 92 contract, despite the fact that collection from 76 family housing area dumpsters was included under other line items in the IFB.

BCRS questions the validity of the IGE because the agency, in using the FY 92 contract to determine price reasonableness, failed to consider differences between the FY 92 contract and the current solicitation as well as increased contractor costs. BCRS argues that when these differences are properly considered, its bid is reasonable. We find that the IGE was reasonably based. In calculating the IGE, the Army considered the various refuse collection needs at the Presidio and its subposts, including deletions and additions of service, and took into account the costs of collection, overhead and profit. The IGE does not reflect an increase in all line items, but overall the estimate represents a net increase over the FY 92 prices to account for the various changes. For example, the IGE for line item

³The exact amount of the IGE and difference between it and the bids received was submitted to our Office under a protective order. Since these amounts could affect the conduct of negotiations, we will not reveal them in this decision.

0001 is higher than BCRS' FY 92 bid for family housing and represents a substantial increase over the FY 92 contract price in view of the shift of family housing dumpsters from line item 0001 to elsewhere in the schedule.

While BCRS asserts that the IFB represents a significant increase in services over the FY 92 contract, our comparison of the two work statements reveals that the increase in services is not extensive and is generally offset by deletions of other services. For example, the IFB schedule adds three, 5 CY-dumpsters, increases the number of pickups for four other 4-CY dumpsters, and adds weekly pickup of an additional four 32-gallon containers at a housing unit. However, the IFB schedule deletes one 4-CY and two 2-CY dumpsters, a number of on-call sites, and weekly collections at some 10 housing units with three 32-gallon containers. The majority of the additions in service affect line items other than 0001, and the agency had no objection to BCRS' bid under those line items. Further, line item 0001 no longer encompasses collection from 76 dumpsters, which costs more than \$37,000 annually at BCRS' currently proposed rates. Since the price of the increased services are not part of BCRS' bid for line item 0001, we find no basis for the rationale that the modest increases in services could account for the increase of more than \$125,000 (approximately 130 percent) in the protester's bid over its FY 92 bid for family housing collections.⁴

With regard to differences attributable to increased costs (dumping fees, wages, transportation costs, and other unspecified direct costs), BCRS estimates the increase in dumping fees as approximately \$40,000 annually, but provides no estimate for the other increased costs. Our review of a price modification to the extended FY 92 contract indicates that the wage increase could represent approximately \$10,000

⁴In a related argument, BCRS notes that under a requirements contract, services may decrease while certain, unquantified costs will not decrease. To the extent the protester objects to the risk associated with a requirements contract, its protest of this alleged solicitation impropriety is untimely. 4 C.F.R. § 21.2(a)(1) (1992). To the extent that it is arguing that its bid for line item 0001 is reasonable due to the risk of decreased services, BCRS has not shown how that risk, even when combined with other cost increases, see infra, accounts for its significant increase in price for this line item. We also note that the risk of decreased services associated with the ultimate closing of the Presidio and reasonable prices to cover that risk would be appropriate issues for negotiations under the converted procurement.

annually.³ While BCRS argues that its costs have "spiraled," the \$50,000 represented by these two items are equivalent to only an approximate 8.5 percent increase over its FY 92 contract price. The protester does not identify to which line items these higher costs apply. Although logic suggests that they be applied to all line items, BCRS' bid indicates that it applied all cost increases to line item 0001. While the IGE for line item 0001 does not represent an increase sufficient to accommodate all the increases in BCRS' bid, overall the IGE does represent a net increase over FY 92 prices sufficient to cover the \$50,000 increase.

BCRS' demonstrated costs represent an 8.5 percent increase overall from the FY 92 contract; however, its bid represents a 28-percent increase overall. Further, its bid for line item 0001 represents an increase of 130 percent over its FY 92 price for family housing collections. In view of the decrease in services encompassed by line item 0001, the Army reasonably determined that this price was unreasonably high in comparison with the IGE. Further, we find no basis to challenge the manner in which the agency used the FY 92 contract in order to arrive at this IGE.

Finally, the protester contends that "at a minimum" the agency's determination of price reasonableness should be based on a comparison of proposed prices with a "number of factors" including government estimates, past procurement history, current market conditions, and other relevant factors. See Crown Laundry & Dry Cleaners, Inc., B-224374.2, Jan. 20, 1987, 87-1 CPD ¶ 71. BCRS states that its per quarters bid (\$6.60) was less than the per house cost (\$9.44) in the San Francisco Bay region, and asserts that the Army's failure to conduct a "timely" market survey was improper. We disagree.

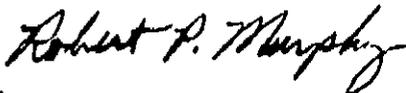
FAR § 14.407-2(a) directs contracting officers to FAR § 15.805-2 for price analysis techniques that may be used to determine whether prices are reasonable. FAR § 15.805-2 provides that contracting officers are responsible for selecting and using whatever price analysis techniques will ensure a fair and reasonable price, and it lists a number of techniques, "one or more" of which may be used for this purpose. This is what we held in Crown. In that case, we stated that a determination of price reasonableness was a matter of administrative discretion involving the exercise

³The modification covered a \$.50 and then \$.85 per hour increase for four employees working in areas which must be serviced five or six times per week. Our \$10,000 estimate is based on 12 months of salary increase for these employees including payroll costs.

of business judgment. We found that such a determination "may" be based on a comparison with "such factors" as government estimates, past history, and current market conditions or other relevant factors, "including any which have been revealed by the bidding." *Id.* While a market survey of current conditions may be a valid basis for comparison, it is not required. Nor is any combination of factors required. A decision based solely on comparison to an IGE may be reasonable. See G. Marine Diesel Corp., B-238703; B-238704, May 31, 1990, 90-1 CPD ¶ 515. Here, the decision was based on comparison to a reasonably based IGE and to the prior year's contract as well. The absence of a presolicitation market survey does not make the Army's decision unreasonable.

Since the determination of unreasonably high prices is supported by the record, the agency properly determined to cancel the solicitation after bid opening and to continue the procurement using negotiation procedures. FAR § 14.404-1(c)(6) and (e)(1).

The protest is denied.


for James F. Hinchman
General Counsel