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**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

*J. Cohen
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DECISION

FILE: B-189329

DATE: February 15, 1978

MATTER OF: G.S.E. Dynamics, Inc.

DIGEST:

1. Contracting officer's determination that only bid received under IFB, \$2,980 per item, was unreasonable and constituted compelling reason to cancel solicitation was not improper, since Government estimate was \$1,653 per item; item price over previous 5 years ranged from \$1,140.04 to \$1,764.34; and most recent procurement of item was for \$1,200.
2. In considering reasonableness of bid submitted by small business under unrestricted IFB, comparison with contract price on previous procurement of same item from large business is proper.
3. Payment of unreasonable price to establish additional source for item is not appropriate in view of requirement that Government obtain its needs at lowest total cost. Fact that unreasonable price reflects substantial tooling costs is irrelevant.
4. IFB was properly canceled since only bid received was at unreasonable price. Negotiation with such bidder on sole-source basis under ASPR § 3-210 (1976 ed.) rather than readvertisement would not be proper where record indicates that other firms are capable of filling Government's requirements and are interested in participating in resolicitation. Same considerations apply to negotiation under ASPR § 3-215.

Invitation for bids (IFB) No. DAAHOI-77-B-0151 was issued as a small business set-aside on February 17, 1977, for 14 elevation dampers, plus a first article. The Government estimate for each item was \$1,658. Item prices over the previous 5 years had ranged from \$1,140.04 to \$1,764.34, and the most recent procurement of the

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item, in January of 1977, was from a large business, Emerson Electric Company (Emerson), for \$1,200 per item.

Only G.S.E. Dynamics, Inc. (G.S.E.), submitted a bid in response to the IFB, in the amount of \$2,650 per item and \$5,000 for the first article. In view of the Government estimate and the item's procurement history, the contracting officer determined that G.S.E.'s bid was unreasonable and canceled the solicitation pursuant to Armed Services Procurement Regulation (ASPR) § 2-404.1 (1976 ed.), which provides in pertinent part:

"(a) The preservation of the integrity of the competitive bid system dictates that after 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 invitation. * * *

"(b) * * * Invitations for bids may be canceled after opening but prior to award when such action is consistent with (a) above and the contracting officer determines in writing that

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"(vi) all otherwise acceptable bids are at unreasonable prices * * *"

A resolicitation for the requirement was issued on April 28 on an unrestricted basis. G.S.E. was again the only bidder, although a late bid, which could not be considered, was received. G.S.E.'s bid had been increased to \$2,980 per item and \$5,000 for the first article. When G.S.E. was advised that the Army intended to cancel the resolicitation, apparently for the same reason the initial IFB was canceled, G.S.E. filed a protest in our Office against the proposed action.

G.S.E. argues that there is no "compelling reason" to cancel the resolicitation under ASPR § 2-404.1(a) and (b) (1976 ed.), since the reasonableness of G.S.E.'s bid

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is properly established by a comparison with other small business bids, rather than with Emerson's; "by way of a pre-award survey;" or by the following comparison with Emerson's low bid under a subsequent solicitation for 83 elevation dampers, issued while G.S.E.'s protest was pending and under which bids were opened on September 15:

* * * * Emerson this time submitted a quotation for \$1,253.00 per unit but also quoted \$30,000 for First Article requirements. The IFB calls for data based on only one First Article. Therefore, Emerson's price of \$30,000 for First Article requirements must be amortized over the number of units to be delivered. The conclusion is obvious. Emerson would have bid the same \$30,000 (compared to protester's \$5,000) if it had had the 14 units under this IFB under consideration herein. Using the same price as the 'call' contract which the contracting officer is using [the January 1977 procurement], that would mean \$2,142 to be added to the \$1,200 referenced by the contracting officer or a total price of \$3,342 per unit. The protester's price of \$2,980 plus \$352 (\$5,000 First Article price amortized over the 14 pieces) would total only \$3,332 or actually \$10 less than Emerson's price if it had bid."

G.S.E. thus argues that the cancellation of the resolicitation after G.S.E.'s price was exposed was unreasonable and in bad faith, and violated G.S.E.'s right to expect a sincere evaluation of its proposal in exchange for expending the time and expense involved in responding to the solicitation.

G.S.E. also suggests that, in any case, award to G.S.E. at either its bid price or at a price negotiated on a sole-source basis pursuant to either ASPR § 3-210 or § 3-215 (1976 ed.) would be advisable, since it would help establish G.S.E. as an alternate source to Emerson of elevation dampers,

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particularly in small quantities. In this connection, G.S.E. states that a substantial portion of its bid represents first-time tooling costs.

We will not consider the merits of G.S.E.'s protest to the extent that it relates to the cancellation of the initial IFB, since a protest on that issue would be untimely under section 20.2(b)(2) of our Bid Protest Procedures, 4 C.F.R. part 20 (1977).

In regard to the cancellation of the resolicitation, it is recognized that the rejection of bids after opening tends to discourage competition because it publicly exposes bids without award, and causes bidders to extend manpower and money in bid preparation without the possibility of acceptance. 52 Comp. Gen. 285 (1972). It is primarily for those reasons that the procurement regulations require that a "compelling reason" must exist for such cancellations. Therefore, the issue here involves only the propriety of the contracting officer's determination under ASPR § 2-404.1(b)(vi) (1976 ed.). We have long recognized that a determination that bid prices are not reasonable is a matter of administrative discretion which our Office will not question unless such determination is unreasonable or there is a showing of bad faith or fraud. See Support Contractors, Inc., B-181607, March 18, 1975, 75-1 CPD 160.

We do not believe that the contracting officer's determination that G.S.E.'s bid of \$2,980 was unreasonable and that cancellation of the IFB was warranted was improper. We agree with the contracting officer as to the relevance and effect of the item's procurement history and the Government's estimate based thereon. Moreover, G.S.E.'s bid was more than twice the price that the Army paid for the item under the January 1977 contract for a comparable number of items (20). The fact that the previous awardee was a large business is irrelevant. Cf. Tufco Industries, Inc., B-189323, July 13, 1977, 77-2 CPD 21, in which we point out that even a large business bid on a small business set-aside, while not eligible for award, may be considered in determining whether small business bids on the procurement are reasonable.

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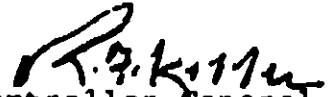
Concerning the use of a preaward survey to determine whether G.S.E.'s bid was reasonable, such a survey relates to a bidder's responsibility. Therefore, to the extent that it involves the reasonableness of a bid, it does so in the context of that particular bidder's capability to perform the contract at that price. See Futronics Industries, Inc., B-185896, March 10, 1976, 76-1 CPD 169. On the other hand, the reasonableness of a bid in the context of the cancellation of a solicitation involves consideration of the bid relative to the price that the Government should otherwise expect to pay for the item. See The Wessel Company, B-189629, August 26, 1977, 77-2 CPD 152. Finally, the Army advises that the first article requirement under the IFB opened on September 15 was waived for Emerson; thus, G.S.E.'s analysis concerning the allocation of first article costs fails, since it must include the assumption that the first article requirement would have been waived under the canceled solicitation as well. Moreover, in view of the waiver under the recent solicitation, we believe that Emerson's resultant bid of \$1,253 per item further serves to establish the unreasonableness of G.S.E.'s bid price under the second IFB. In this connection, the fact that G.S.E.'s bid of \$2,980 per item represents substantial tooling costs does not render such price reasonable. Swedlow, Inc., B-189751, December 21, 1977, 77-2 CPD 489.

Thus, the contracting officer acted properly in determining that G.S.E.'s bid was unacceptable for award under the IFB. Moreover, in regard to whether, in lieu of issuing a third solicitation, negotiations should have been conducted with G.S.E. pursuant to ASPR § 3-210 or § 3-215 (1976 ed.), we first note that the payment of an otherwise unreasonable price for an item to establish an additional source, as suggested by G.S.E., would not be appropriate in view of the requirement that the Government obtain its needs at the lowest total cost. See Swedlow, Inc., supra; Martin & Turner Supply Company, 54 Comp. Gen. 395, 74-2 CPD 267. In any case, the cited regulation, specifically ASPR § 3-210 (1976 ed.), implementing 10 U.S.C. § 2304(a) (1970), authorizes

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negotiation for supplies and services "for which it is impracticable to obtain competition." G.S.E. argues that negotiation under the provision is appropriate since G.S.E. is the only firm interested in supplying the item to the Army in small quantities. However, use of that provision is discretionary with the contracting agency. Hewlett-Packard Company, B-184515, January 12, 1976, 76-1 CPD 18. Since it is clear that G.S.E. is not the only firm capable of providing elevation dampers, and in view of the procurement history of the item, the submission of a late bid by another firm, and indication in the record that there was a reasonable expectation of adequate competition if a new solicitation were issued, negotiation under that regulation would not be warranted. See Hewlett-Packard Company, supra. In fact, G.S.E. was the third low bidder under the solicitation for 83 items noted above. The same considerations apply in regard to ASPR § 3-215 (1976 ed.), which implements 10 U.S.C. § 2304(a)(15) (1970), authorizing negotiation after advertising where bids received are unreasonable.

The protest is denied.


Deputy Comptroller General
of the United States