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DECISION



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

9468

FILE: B-193185

DATE: March 16, 1979

MATTER OF: Coil Company Inc.

[Protest of Contract Award By Department of Agriculture]
DIGEST:

1. Protest that IFB specifications were unduly restrictive is untimely and will not be considered on merits, since it was not filed prior to bid opening.
2. Cancellation of IFB because only bid received is unreasonable in price involves broad discretion on part of contracting officer, and may be based on comparison with past procurement history. Where only bid under 1978 IFB for units was \$31,420, and 1977 purchase price of similar units was \$25,756, cancellation and resolicitation was not abuse of discretion. Moreover, low bid of \$18,604 under resolicitation supports decision to cancel.
3. IFB under which only one bid was received was canceled on basis that lack of adequate competition resulted in unreasonable bid price. Resolicitation need not be canceled merely because only one bid was again received, since that bid price was determined to be reasonable.

Invitation for bids (IFB) No. 86-E-SEA/FR-78 for three heating, ventilation, and air-conditioning (HVAC) units was issued on May 31, 1978, by the Department of Agriculture. Coil Company Inc. (Coil) submitted the only bid, in the amount of \$31,420, although a late bid was received from American Air Filter Co., Inc. (American), and was returned unopened. Coil's bid price exceeded by \$5,664 the cost (\$25,756) of three HVAC units purchased the previous year. Therefore, the solicitation was canceled on August 8 pursuant to the Federal Procurement Regulations (FPR) § 1-2.404-1 (1964 ed. circ. 1) which provides in pertinent part:

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"Cancellation of invitation after opening.

"(a) 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, and all bids rejected, where such action is consistent with § 1-2.404-1(a) and the contracting officer determines in writing that cancellation is in the best interest of the Government for reasons such as the following:

* * * * *

"(7) The bids received did not provide competition which was adequate to insure reasonable prices."

On August 10, the requirement was readvertised under IFB No. 124-E-SEA/FR-78. Only American submitted a bid. The bid price in the amount of \$18,604 was determined reasonable based on the 1977 purchase price and Coil's bid price under the initial IFB. Award was made to American on September 15.

By letter dated September 29, Coil filed a protest with the contracting officer against the award to American. On October 12, before receiving a response from the contracting officer, Coil filed a protest on the matter in our Office.

Coil first argues that the invitations' specifications were unduly restrictive in that they were "copied word for word" from American's HVAC catalogue. Second, Coil contends that the 1977 purchase of HVAC units should not be used as

a basis for comparison with the 1978 purchase. Coil points out that the 1978 solicitation involved additional and more expensive equipment, which allegedly accounted for 11 percent (\$3,456.20) of its bid price. Coil also suggests that since the solicitations were opened over a year apart, "inflation and pricing adjustment" must be considered in any comparison. Finally, Coil argues that since the first IFB for the requirement was canceled because of lack of competition, the second, under which only one bid was also received, should in fairness have been canceled as well.

Section 20.2(b)(1) of our Bid Protest Procedures, 4 C.F.R. part 20 (1978) (Procedures), requires that protests based upon alleged improprieties in a formally advertised solicitation which are apparent prior to bid opening must be filed prior to that date. The allegedly restrictive nature of the specifications was first apparent upon Coil's receipt of the initial solicitation and again upon receipt of the resolicitation (the record indicates that Coil was in fact furnished a copy of the resolicitation). Bids were opened under the former on June 28 and under the latter on August 11. Since a protest was first filed by Coil by letter of September 29, the matter was untimely raised under our Procedures and will not be considered on the merits.

Concerning the rejection of Coil's bid based on the 1977 purchase price, our Office has consistently recognized that while the cancellation of an IFB after bid opening is permissible only for cogent and compelling reasons, a cancellation based on a determination that the only acceptable bid is unreasonably high in price involves the exercise of a broad degree of discretion on the part of the contracting officer. See St. Louis Ship, B-191847, August 4, 1978, 78-2 CPD 89. FPR § 1-2.407-2 (1964 ed. amend. 139) requires that "particular care" be taken in determining reasonableness of price where the acceptable bid is the only bid received. See The Wessel Company, B-189629, August 26, 1977, 77-2 CPD 152.

We do not believe that the rejection of Coil's bid of \$31,420 as unreasonable pursuant to FPR § 1-2.404-1(b)(7) (1964 ed. circ. 1) was an abuse of the contracting officer's discretion. A determination of price reasonableness properly may be based on a comparison with past procurement history, as well as other relevant factors. Schottel of America, Inc., B-190546, March 21, 1978, 78-1 CPD 220. The bid was substantially higher (22 percent) than the 1977 purchase price of \$25,756. Although the record shows that the 1977 and 1978 requirements are slightly different, there is no evidence other than Coil's argument that such difference necessarily resulted in increased costs for the 1978 units. See Reliable Maintenance Service, Inc.,--request for reconsideration, B-185103, May 24, 1976, 76-1 CPD 337. In any case, even assuming that Coil's bid in fact included \$3,456.20 as alleged to account for the changes in the 1978 HVAC units, the bid would still be 8.5 percent higher than the 1977 price. We have upheld the rejection of bids and readvertisement where the lowest eligible bid exceeded the basis for comparison by as little as 7.2 percent. See Building Maintenance Specialists, Inc., B-186441, September 10, 1976, 76-2 CPD 233.

Further, both the contention regarding the difference in requirements and the suggestion that "inflation and pricing adjustment" are also causes for a higher bid price are rebutted by American's bid price under the resolicitation of \$18,604, which is \$7,152 lower than the 1977 purchase price. In this connection, Coil contends that this type of "after-the-fact" comparison is improper. Clearly, the determination to reject a bid as unreasonable in price and readvertise must be based on the facts available at that time. However, we see no impropriety in considering the results of the resolicitation as evidence in support of that determination. G.S.E. Dynamics, Inc., B-189329, February 15, 1978, 78-1 CPD 127.

Finally, Coil's bid was rejected not merely because there was a lack of competition, but because the result was an unreasonably high bid price. FPR § 1-2.404-1(b)(7) (1964 ed. circ. 1). Since the second procurement resulted in a reasonable bid price, the fact that only one bid was received is not sufficient basis for cancellation thereof.

The protest is denied.


Deputy Comptroller General
of the United States