

DOCUMENT RESUME

03328 - [A2413555]

[Company Did Not Constitute Adequate Competition to Assure Reasonable Price]. B-189629, August 26, 1977. 5 pp.

Decision re: Wessel Co., Inc.; by Milton Socolar (for Elmer B. Staats, Comptroller General).

Issue Area: Federal Procurement of Goods and Services (1900).  
Contact: Office of the General Counsel: Procurement Law II.  
Budget Function: General Government; Other General Government (806).

Organization Concerned: Government Printing Office; Quill Printing Corp.

Authority: Federal Property and Administrative Services Act (44 U.S.C. 311). F.P.R. 1-2.407-1(b). F.P.R. 1-2.407-2. F.P.R. 1-2.404-1. 4 C.F.R. 20.7. B-188429 (1977). B-181057 (1974). B-188179 (1977). 56 Comp. Gen. 369, 56 Comp. Gen. 371, 372, 49 Comp. Gen. 211, 49 Comp. Gen. 215. 40 Comp. Gen. 671. 40 Comp. Gen. 674. 53 Comp. Gen. 586.

The sole bidder protested the rejection of its bid and the readvertisement under revised specifications. Since adequate competition was not elicited under the original solicitation to assure a reasonable price, the protester's arguments were not relevant to the circumstances of the case. (SW)

3555  
03328  
**DECISION**



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

**FILE: B-189629**

**DATE: August 26, 1977**

**MATTER OF: The Wessel Company**

**DIGEST:**

1. Rejection of only timely bid due to determination of price unreasonableness, and subsequent readvertisement under revised specifications, is not improper. Regulation providing that award "shall be made" when less than three bids are received does not preclude rejection of bids when compelling reason to do so exists.
2. Determination as to reasonableness of bid price is matter of agency discretion which will not be questioned absent a clear abuse of discretion.
3. Objection to public opening of sole bid, which was subsequently rejected as unreasonably high, on grounds that contracting officer knew of bid price prior to opening, is denied since all bids received prior to bid opening must be publicly opened and recorded.

The Wessel Company (Wessel) has protested the rejection of its bid, the sole bid under Government Printing Office (GPO) Jacket Number 237-537, and the subsequent readvertisement of the requirement under revised specifications following GPO's determination that Wessel's bid did not constitute adequate competition to assure a reasonable price and that revised specifications would engender greater competition resulting in more reasonable prices. Wessel requests cancellation of the award to Quill Printing Corporation, the low bidder under the readvertised procurement, and reinstatement of the original invitation with award to Wessel.

Wessel contends that it is improper for the contracting officer to resolicit the requirement after public exposure of Wessel's price and rejection of Wessel's bid for the stated reason because the contracting officer was allegedly aware of Wessel's bid price prior to bid opening since Wessel submitted a telegraphic

rather than a sealed bid, Wessel further argues that Federal Procurement Regulations (FPR) § 1-2.407-1(b) (1964 ed.) precludes the contracting officer, in instances where fewer than three bids are received, from undertaking corrective action to increase competition on that procurement, but instead mandates that award "shall be made". Wessel also asserts that there was no compelling reason to expose Wessel's bid and then reject it, since it was known from the prior procurement history of the item that competition was extremely limited, especially since Wessel was the only bidder under the most recent procurement in 1976, and because the bid "was only 22 percent above Rand McNally's contract price for the August 1975 procurement," the only contract awarded to a bidder other than Wessel between mid-1975 and mid-1977. Wessel objects to any comparison of the price of its rejected bid to both of its 1976 bids which "obviously represented efforts to obtain contracts irrespective of their non-profitability," and instead suggests that its price should be considered reasonable in view of the 1975 price and subsequent inflation.

GPO's initial invitation (for purchase of change of address kits for the U.S. Postal Service) was mailed to 20 firms. However, when bids were opened on June 27, 1977, the only bid eligible for consideration was Wessel's at \$344,000. A late bid from Quill Printing Company in the amount of \$282,500 was received and could not be considered. Because Wessel's unit price of \$34.40 per thousand kits was approximately 24 percent higher than the previous Wessel contract unit price of \$27.70, GPO conducted an investigation to determine if there was a plausible explanation for the "much higher" bid price. GPO discovered that only 21 firms had the capability of meeting the specifications, but that with a reduction of the "trim size", potential bidders would number 401.

Accordingly, Wessel's bid was rejected and the requirement readvertised under revised specifications specifying one less card in the kit, a reduced trim size, and an extended delivery schedule. Bids for the readvertised requirement were opened July 20, 1977. Of the 12 responses received, Quill was the low bidder at \$267,179 for a unit price of \$26.18/m, and Wessel was fifth low at \$294,000 for a unit price of \$29.40/m. Award was made to Quill.

Although the Federal Procurement Regulations, promulgated pursuant to the Federal Property and Administrative Services Act, are not applicable to GPO, see 44 U.S.C. § 311 (1970), we are

B-189629

advised that the agency follows them as a matter of practice because GPO has not promulgated its own comprehensive procurement regulations, and that GPO believes its actions in this case comport with those regulations. Accordingly, in reviewing GPO's actions, we must consider the applicable provisions of those regulations.

Wessel relies on FPR § 1-2.404-1(a) and § 1-2.407-1(b). The former states that preservation of the integrity of the competitive bidding system dictates that after bids have been opened, award should be made to the low, responsive, responsible bidder unless there is a compelling reason to reject all bids and cancel the invitation. The latter states:

"If less than three bids have been received, the contracting officer shall examine, to the extent deemed appropriate in accordance with agency procedures, the reason for the small number of bids received. The purpose of this examination is to ascertain whether the small number of responses is attributable to an absence of any of the prerequisites of formal advertising \* \* \*. Award shall be made; however the record of the invitation for bids \* \* \* shall include a recommendation by the contracting officer for corrective action which should be taken to increase competition in future procurements of the same or similar items."

Wessel states that the contracting officer violated both provisions because "there was no compelling reason to expose and then reject" Wessel's bid and because the latter provision precludes bid rejection in order to obtain greater competition in any procurement where less than three bids are received.

We do not agree. Although a compelling reason must exist to warrant rejection of all bids after bid opening, FPR § 1-2.404-1(b) permits the cancellation after bid opening but prior to award for a number of enumerated reasons, including when "all acceptable bids received are at unreasonable prices" (FPR § 1-2.404-1(u)(5)) and when "bids received did not provide competition which was adequate to insure reasonable prices." (FPR § 1-2.404-1(b)(7)). Moreover, FPR § 1-2.407-2 requires that a contracting officer not award a contract until he determines, inter alia, that prices

B-189629

offered are reasonable. The requirement for a determination of price reasonableness is not exempted in instances where just one bid is received but, to the contrary, the provision requires that "particular care" be taken where only a single bid is received. In this regard, we have upheld the cancellation of an IFB and resolicitation where only two bids were received and both were determined unreasonable as to price. See, e.g., C.J. Coakley Company, Inc., B-181057, July 23, 1974, 74-2 CPD 51. The mandate of FPR § 1-2.407-1(b) that award "shall be made" means only that the receipt of less than three bids is not by itself a basis for rejection of all bids on the ground that adequate competition was not obtained. It does not preclude rejection if there is otherwise a compelling reason to do so.

The record reveals that the principal reason for rejection of Wessel's bid was a determination that its price was excessive. It was only because Wessel's current bid was 24 percent above last year's contract price that its reasonableness was questioned and it appears that GPO rejected Wessel's bid because it was excessive as to price and not merely for the sake of engendering more competition. In this regard, Wessel was the only bidder in the September 1976 procurement of the item, and its unit price of \$27.70 was found reasonable and accepted notwithstanding a lack of competition. We have no reason to believe that its sole bid in this instance would not have been likewise accepted but for its excessive bid price.

We have held that the rejection of all acceptable bids upon a determination of price unreasonableness is a matter of administrative discretion which will not be questioned barring fraud or bad faith or unless otherwise unreasonable. McCarthy Manufacturing Company, 56 Comp. Gen. 269, 371-2 (1977), 77-1 CPD 116; Valley Cement Construction, Inc., B-188429, May 25, 1977, 77-1 CPD 366.

With regard to Wessel's arguments that it was improper to use that firm's prior contract prices as a point of reference for a determination of price unreasonableness, we find nothing in the record which shows that GPO should have known that Wessel's prior contract prices were at unprofitable levels. Moreover, during a conference conducted by this Office pursuant to 4 C.F.R. § 20.7 (1977), GPO officials advised that their estimate for the effort (prior to the specification revision) was \$285,000, and that this took into account such variables as labor cost increase, adjustments to the cost of paper, etc. The record

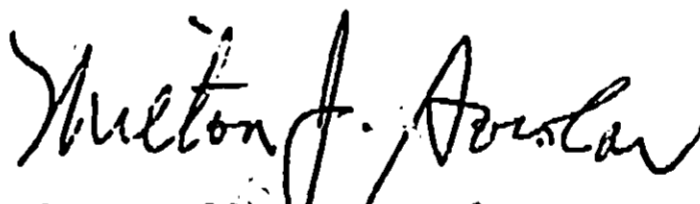
B-89629

affords us no basis to dispute the validity of that estimate or to conclude that the determination of price unreasonableness was either fraudulent, unreasonable, or not made in good faith.

Concerning the argument that the contracting officer should not have exposed Wessel's bid in order to reject it because he already knew the price and presumably its excessive nature, the contracting officer states that he did not have possession of Wessel's telegraphic bid until the time of bid opening because the bid, although received by the GPO Telephone Section on June 24, 1977, was safeguarded until the June 27 bid opening. In any event, FPR § 1-2.402 requires that all bids received prior to the time set for bid opening be publicly opened, recorded, and subject to examination by any interested persons. Accordingly, the contracting officer was required to publicly open the Wessel bid.

We have reviewed the several authorities cited by Wessel for the proposition that its bid should have been accepted. Essentially, they involve situations in which we did not find a compelling reason for cancellation and resolicitation, and therefore recommended reinstatement of the original invitation. See 49 Comp. Gen. 211, 215 (1969); 40 Comp. Gen. 671, 674 (1961); GAF Corporation, et al., 53 Comp. Gen. 586 (1974), 74-1 CPD 68; and Suburban Industrial Maintenance Company, B-188179, June 28, 1977, 77-1 CPD 459. However, none of those cases involved the rejection of bids due to an agency determination of price unreasonableness, and we therefore fail to see their relevance to the circumstances of the instant case.

The protest is denied.

*for*   
Comptroller General  
of the United States