

DECISION

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

120072

FILE: B-207426

DATE: December 7, 1982

MATTER OF: Freund Precision, Inc.

DIGEST:

1. Contracting officer's decision to cancel a solicitation and resolicit agency's requirements was not improper where sole bid price was five times greater than both Government estimate and prices previously paid for similar items and contracting officer was not aware of any reasonable basis for a price increase of that magnitude.
2. Bidder's expenses for retooling needed to produce solicited items are not determinative of question whether at price bid by protester Government would be obtaining needed items at reasonable price.
3. Bidder's contention that contracting officer should have questioned it concerning the reasonableness of its price after bid opening if he believed bid price to be unreasonable is without merit since such action would be improper in an advertised procurement.
4. Although the results of a resolicitation may be used to support the reasonableness of a decision to reject a bid as unreasonably high, the reasonableness of the decision must be determined in light of the information available at the time decision is made.

Freund Precision, Inc., protests the cancellation of invitation for bids (IFB) No. DLA900-82-B-3556 by the Defense Electronics Supply Center (DESC), Defense Logistics Agency. Freund questions the propriety of the contracting officer's decision to cancel the solicitation based on his finding that Freund's bid prices were excessive. For the reasons that follow, we find that the decision to cancel the solicitation was reasonable and deny the protest.

The solicitation was issued by DESC on March 17, 1982, and called for bids on various quantities of a body receptacle connector, to be manufactured in accordance with revision B of an Air Force drawing. The IFB also requested a price for first article testing.

At the April 16 bid opening, Freund was the sole bidder offering the following prices for the quantities shown:

25-49	50-99	100-249	250-499	500-1000
\$1,500 ea.	\$1,100 ea.	\$928 ea.	634 ea.	\$498 ea.

Freund's bid prices were more than 500 percent above the Government estimate of \$14,487.34 for the contemplated quantity of 98 units and approximately the same percentage above the prices paid for similar items in 1977 (\$138.43 each for a quantity of 150) and 1978 (\$107 each for a quantity of 427). On the basis of this information, the contracting officer determined that Freund's prices were unreasonably high and consequently rejected the bid and canceled the solicitation.

Freund argues that the contracting officer's conclusion was incorrect. Specifically, Freund contends that the contracting officer based his decision on the previous prices paid for the item conforming to revision A of the Air Force drawing (which specified that plastic inserts to be used in the connectors must be made of Black Valox), which the contracting officer thought he was purchasing. In fact, Freund observes, the item called for in this IFB was required to conform to revision B of the drawing (which specified that the plastic inserts be made of diallyl phythalate). Freund argues that the contracting officer failed to take into account the costs of the retooling Freund had to incur to produce the connectors containing the new material. The protester also argues that if the contracting officer had any doubts as to the reasonableness of its prices, he should have requested Freund to justify its prices or have had the prices audited.

DESC states that the contracting officer had a duty to cancel the solicitation since it was clear, in light of the Government estimate and prior procurement history for the connectors, that Freund's bid prices were unreasonable.

It concedes that when he made the determination regarding Freund's prices, the contracting officer was not aware of the difference between the "A" and "B" connectors. DESC argues, however, that the decision to cancel the solicitation was reasonable because the only difference between the two items was the material used to make the plastic insert component of the connectors, and this difference alone was inadequate to justify the great increase in the price of the connectors.

Because of the potential adverse impact on the competitive system, a contracting officer's decision to cancel an invitation after all bid prices have been exposed must be supported by a cogent and compelling reason. Marmac Industries, Inc., B-203377.5, January 8, 1982, 82-1 CPD 22. The regulations provide that such a reason exists where the contracting officer determines that the prices received are unreasonable. Defense Acquisition Regulation § 2-404.1(b)(vi). The determination of whether such a reason for cancellation exists in a particular case (here, whether Freund's prices were in fact unreasonable) is a matter primarily within the discretion of the contracting agency and thus will not be disturbed by our Office absent clear proof of abuse of discretion. Ramsey Canyon Enterprises, B-204576, March 15, 1982, 82-1 CPD 237. A determination that a bid price is unreasonable may be based upon a Government estimate, past procurement history, or any other relevant factors. Lashcon, Inc., B-201833, June 9, 1981, 81-1 CPD 469.

We believe the contracting officer had a reasonable basis for his action. Although the record does not establish the efficacy of the Government estimate (while the estimate appears to be based on prices paid in 1977 and 1978, there is no indication in DESC's report of how it accounted for such factors as the increased costs of material or the general effect of inflation), the procurement history of the item clearly made Freund's bid prices suspect in this case. That procurement history shows no substantial change between the 1977 and 1978 purchases, but a more than 500 percent increase between the 1978 purchase and Freund's bid prices. Since the record does not establish that the contracting officer should have known of any basis for the reasonableness of such an increase, we think the contracting officer could

have reasonably concluded that Freund's prices were excessive even considering cost increases and inflation. See Freund Precision, Inc., B-197770, June 17, 1980, 80-1 CPD 422.

Freund does argue that since the contracting officer was confused as to the material to be used in fabricating the plastic insert used in the connector, it was improper for the contracting officer to rely on this procurement history in arriving at his decision to cancel the solicitation. We disagree.

The July 1977 award was made to Freund for the identical item which was the subject of the canceled solicitation. Although the material specified (diallyl phthalate) for the plastic insert portion of the connector was changed to Black Valox at Freund's request during the course of performance of this contract, the price was not changed. Moreover, while the 1978 award contract called for the new material for the insert, there was not a significant change in price over the 1977 award.

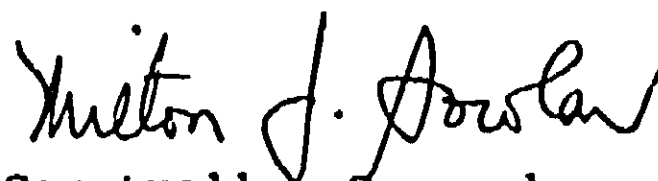
Our conclusion is not affected by Freund's assertion regarding its retooling costs. There is no indication that the contracting officer should have been aware at the time he made his determination that retooling would be required. Moreover, even if such costs were indeed necessary, this does not mean that the Government had to accept what it considered to be an unreasonable price for the item it was buying. See Swedlow, Inc., B-189751, December 21, 1977, 77-2 CPD 489

Also the contracting officer was not required to ask Freund to justify its price or to have an audit performed to establish the reasonableness of Freund's prices. The contracting officer need only compare the bid with such things as other bid prices received and prior procurement history; if he can reasonably conclude from that comparison that a bid price is too high, he need not do more prior to rejecting the bid. See Freund Precision, Inc., B-199364; B-200303, October 20, 1980, 80-2 CPD 300.

Finally, Freund argues that the results of the re-solicitation--the unit prices on the quantity the agency contemplated purchasing under the original solicitation ranged from a low of \$992.00 to a high of \$1900.00--show that its original unit price of \$1100.00 was reasonable.

While the results of a resolicitation can be used to support the reasonableness of a decision to reject a bid as unreasonably high, what must be controlling is the reasonableness of the decision in light of the information available at the time the decision was made. See Honolulu Disposal Service, Inc.,--Reconsideration, B-200753.2, August 12, 1981, 81-2 CPD 126; Coil Company, Inc., B-193185, March 16, 1979, 79-1 CPD 185. Here, as indicated above, considering the great disparity between the prior bid by Freund under the initial solicitation and those paid by the agency under the previous procurements, we think the contracting officer acted reasonably on the information available when he determined to reject all bids. Moreover, we note that under the resolicitation award was made for a substantially higher quantity (500) than originally contemplated and at a significantly lower unit price (\$353).

The protest is denied.


for Comptroller General
of the United States