

Kuppert



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Trebor Industries, Inc.  
File: B-228906  
Date: November 4, 1987

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### DIGEST

Agency's rejection of only bid received on the bases of unreasonable price and failure to solicit five of six vendors on the recommended source list is proper where the bid price received is approximately 38 percent higher than the government estimate.

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### DECISION

Trebor Industries, Inc. protests the cancellation after bid opening of invitation for bids (IFB) No. S0378034, issued July 9, 1987, by the Department of the Interior, Bureau of Mines, for a Near Infrared Spectrum Analyzer and associated equipment. The agency canceled the invitation after the contracting officer determined that five of the six known sources of supply had been left off of the IFB's mailing list, and that Trebor's bid, the only one received, was unreasonable as to price. We deny the protest.

The original requisition forwarded for purchase of the item recommended Guided Wave, Inc. as the only source of supply, but the contracting officer requested additional sources from the requisitioner to obtain full and open competition. Interior synopsised the requirement in the Commerce Business Daily (CBD) on June 23, and sent the IFB to seven firms, including Trebor, but inadvertently omitted five of the six vendors on the recommended source list from the IFB mailing list. This oversight was not discovered until the bid opening when only Trebor's \$39,000 bid was received. In view of the exclusion of several known sources of supply, and the fact that Trebor's price was considered unreasonably high compared to the government estimate, the contracting officer canceled the IFB. Trebor contends that there was no compelling reason to reject its bid and cancel the invitation and argues that any rebid after Trebor's price has been disclosed would be improper.

The Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.404-1(a)(1) (1986), provides that after bids have been opened, award must be made to the lowest responsible bidder

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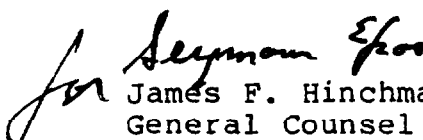
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unless there is a compelling reason to reject all bids and resolicit. The regulation specifically provides that a solicitation may be canceled after bid opening if the prices of all otherwise acceptable bids are unreasonable. FAR, 48 C.F.R. § 14.404-1(c)(6). Such a determination of unreasonableness involves broad discretion on the part of the contracting officer, and we generally will not disturb it absent a showing of fraud or bad faith. Mid South Industries, Inc., B-216281, Feb. 11, 1985, 85-1 CPD ¶ 175. In this regard, we have recognized that a determination of price reasonableness properly may be based upon comparisons with such things as a government estimate, past procurement history, current market conditions, or any other relevant factors. Omega Container, Inc., B-206858.2, Nov. 26, 1982, 82-2 CPD ¶ 475.

Here, the contracting officer determined that Trebor's bid was unreasonable as to price because it was approximately 38 percent higher than the government estimate (\$28,150), which the agency states was established from a published price list for Guided Wave equipment that is known to fulfill the government's minimum needs. As we have found cancellation based on price unreasonableness to be justified where the low responsive bid exceeded the government estimate by similar percentages, see Washington Patrol Service, Inc., B-225610, et al., Apr. 7, 1987, 87-1 CPD ¶ 384 (33 percent), and IFR, Inc., B-209929, May 17, 1983, 83-1 CPD ¶ 524 (24 percent), we believe the contracting officer here properly determined that Trebor's price was unreasonable.

Trebor contends that the agency deliberately did not solicit Guided Wave's bid and set an artificially low estimate to assure that the low bidder could be rejected after bid opening. The protester has the burden of proving such bad faith on the part of contracting officials, however, and a showing of bad faith requires proof that the official had a specific and malicious intent to injure the protester. Gayston Corp.--Request for Reconsideration, B-223090.2, July 25, 1986, 86-2 CPD ¶ 115. The record here simply contains no evidence establishing such an intent on the part of agency officials. Trebor's bare speculative allegation is not sufficient to establish agency bad faith. See Metron Corp., B-227014, June 29, 1987, 87-1 CPD ¶ 642.

The protest is denied.

  
James F. Hinchman  
General Counsel