The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Artisan Electronics Corporation

File: B-230306

Date: May 4, 1988

DIGEST

Protest that agency improperly awarded a contract for tool sets under a small business set-aside to a firm that proposed a price in excess of the item's fair market price is denied, since the agency's determination, in accordance with governing procurement regulations, that the awardee's offered price did not exceed the fair market price, was reasonable.

DECISION

Artisan Electronics Corporation protests a contract award to Machinecraft of Baltimore under Department of the Navy request for proposals (RFP) No. N00104-87-R-WP17 for 304 tool sets for defusing explosive rockets. Artisan argues that the contract price is more than the fair market price of the item.

We deny the protest.

The RFP was issued on October 19, 1987, and was set aside for small business concerns. The Navy received seven offers, six from small business concerns and one from Artisan. Artisan had received the two prior contracts for the tool sets under small business set-asides, but is now a large business concern. The prices offered ranged from Artisan's low offer of $2,145 per tool set to $4,250 per tool set. Machinecraft submitted an offer of $2,345 per tool set, the lowest offer by a small business concern. The Navy reviewed Machinecraft's offer based on the acquisition history of the item and the current offers; determined that Machinecraft proposed a fair and reasonable price; and, on January 5, 1988, awarded the contract to that firm.

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Artisan argues that its lower offer represents the fair market price, as well as the only reasonable price, of the tool sets. Artisan contends that the contract therefore should be canceled and the requirement resolicited on an unrestricted basis.

According to Federal Acquisition Regulation (FAR) § 19.501(j) (FAC 84-31), a contract may not be awarded under a small business set-aside at more than the item's fair market price. FAR § 19.001 defines the fair market price as a price based on reasonable costs under normal competitive conditions, and not on the lowest possible cost. FAR § 19.202-6 directs agencies to determine fair market price in accordance with FAR § 15.805-2, which permits a contracting officer to select whatever price analysis techniques will ensure a fair and reasonable price, including a comparison of proposed prices received in response to the solicitation, and/or a comparison of prior proposed and contract prices with current proposed prices. In view of the nature of a determination as to fair market price, our Office will not question an agency's judgment in that regard as long as it is reasonable and there is no showing that the agency engaged in fraud or bad faith. Cherokee Enterprises, Inc., B-228330, Dec. 4, 1987, 87-2 CPD ¶ 552.

The Navy reports that the two prior contracts for the tool sets were awarded to Artisan at $2,880 per unit for 215 units, and $2,640 per unit for 129 units. The Navy asserts that, as suggested by the FAR, it compared Machinecraft's offered price of $2,345 per tool set with these prior contract prices and with the prices offered under the current solicitation and, based on the comparison, found that Machinecraft's offered price was fair and reasonable. The Navy further reports that the solicitation required delivery of the tool sets within 120 days after first article approval if required, or 120 days after award if first article testing was not required. The agency contends that since Artisan offered to deliver the tool sets 240 days after either award or first article approval, Artisan's offer does not comply with the RFP and cannot be used to determine the fair market price of the tool sets.

We have no basis on which to question the Navy's determination that the price offered by Machinecraft does not exceed the fair market price for the items. As indicated above, the FAR specifically recognizes that the fair market price is not the lowest possible price, FAR § 19.001, so that the fact that Artisan's offer was 10 percent below Machinecraft's (for 240-day delivery) does not in itself compromise the Navy's analysis. Further, as the Navy notes, FAR § 19.202-6 directs the agency to determine the fair market price in accordance with FAR § 15.805-2, which tells the contracting agency how to make sure it is obtaining a fair and reasonable price; the price analysis used here squarely complies with the prescribed approach. Finally, Machinecraft's offered unit price of $2,345 was less than the prices paid Artisan under that firm's prior contracts.

In sum, we cannot say that the Navy's decision that the offered price was a fair market price was unreasonable. The protest is denied.

Seymour Efros
for James F. Hinchman
General Counsel