



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: R. G. Dunn & Associates, Inc.
File: B-230831; B-230832
Date: July 8, 1988

DIGEST

1. Protests of withdrawal of small business set-asides are denied where contracting officer reasonably determined, based on a comparison of offeror's prices for large business-manufactured kits with its prices for 50-percent small business-manufactured kits that the latter prices were unreasonable.
2. Protests by small business offeror that agency should not have rejected its bid samples as unacceptable without first allowing it an opportunity to correct any deficiencies are dismissed as academic where contracting officer dissolved small business set-asides after determining that protester's prices were unreasonable and protester will be given an opportunity to compete for unrestricted requirements.

DECISION

R. G. Dunn & Associates, Inc. protests the removal of the small business set-aside restriction on request for proposals (RFP) Nos. F41608-87-R-5860 (RFP 5860) and F41608-87-R-1785 (RFP 1785), issued by the San Antonio Air Logistics Center for magnetic particle process control kits and penetrant process control kits, respectively. The Air Force rejected Dunn's offers and dissolved the set-asides after determining that the prices offered by Dunn, the sole offeror under both solicitations, were unreasonable. Dunn argues that the Air Force lacked a rational basis for determining its prices unreasonable. We deny the protests in part and dismiss them in part.

The Air Force issued RFP 5860 on October 15, 1987, for an indefinite quantity of the magnetic particle kits. RFP 1785, for an indefinite quantity of the penetrant process

kits, was issued on October 26. Both solicitations were 100 percent set aside for small businesses. Proposals were due by November 16 and November 25, respectively.

In responding to the solicitations, Dunn certified that it was a small business, but indicated that it intended to supply kits manufactured by a large business. The contracting officer advised Dunn that pursuant to Federal Acquisition Regulation (FAR) § 19.102(f)(2), more than 50 percent of the total value of the kits and their contents would have to be accounted for by items manufactured by small business. Dunn responded by redesignating its sources of supply so that more than 50 percent of the value of the kits and their contents would be acquired from small business manufacturers.

Dunn submitted revised price proposals on February 15, 1988, that were both approximately 30 percent higher than its original offers. The contracting officer determined that the revised prices were unreasonable based on the prices originally offered and, in the case of the penetrant process control kits, based on the prices offered under an earlier procurement. The contracting officer therefore withdrew the set-aside determination in accordance with FAR § 19.506(a) and amended the RFPs to make the acquisitions unrestricted. The agency small and disadvantaged business utilization specialist concurred in the decision. The following day, the contracting activity was advised that a bid sample submitted by Dunn for the magnetic particle process control kit had been disapproved. The bid sample submitted by Dunn for the penetrant process control kit was subsequently determined to be unacceptable as well.

Dunn contends that the contracting officer lacked a rational basis for determining its prices unreasonable. Dunn argues that the discrepancy between its original prices for the large business-manufactured kits and its revised prices for kits containing more than 50 percent small business-manufactured items does not indicate that the revised prices were unreasonable. Dunn also argues, with regard to the penetrant process control kit, that its price is not, as the agency argues, excessive in comparison with the prices paid for the kits in the past and, with regard to the magnetic particle process control kit, that the reasonableness of its price is demonstrated by comparison with the government's estimate for the procurement.

A determination of price reasonableness for a small business set-aside is within the discretion of the procuring agency, and we will not disturb such a determination unless it is clearly unreasonable or there is a showing of possible

fraud or bad faith on the part of the contracting officer. Messinger Bearings Corp., B-219724, Oct. 23, 1985, 85-2 CPD ¶ 448. In making this determination, the contracting officer may consider pricing history or other relevant factors revealed by the bidding, such as a "courtesy bid" submitted by an ineligible large business. Id. Here, Dunn in effect provided its own "courtesy bid" by originally offering under each RFP a price for a large business-manufactured kit. These prices were significantly lower--approximately 30 percent--than Dunn's revised prices for kits containing more than 50 percent small business manufactured items.

Dunn contends that the discrepancy between its two prices does not support a conclusion that its prices for the 50 percent small business kits are unreasonable. Dunn submits that the small business set-aside program embodies a legislative determination that although it is more expensive to purchase from small businesses than from large ones, the socioeconomic value of supporting small business outweighs the additional cost to the government.

We agree with Dunn--and have previously recognized in our decisions--that in view of the congressional policy favoring small business, contracts may be awarded to small business firms at premium prices. APAC-Tennessee, Inc., B-229710, et al., Feb. 8, 1988, 88-1 CPD ¶ 124; Advanced Construction, Inc., B-218554, May 22, 1985, 85-1 CPD ¶ 587. To the extent, however, that Dunn is suggesting that any premium, no matter how large, may be paid, we disagree. The prices bid by small businesses must be reasonable, and although there is a range above the large business price that may be considered reasonable, this range is not unlimited. Advanced Construction, Inc., supra. We have in the past upheld the rejection of a small business offer as unreasonably priced where it exceeded a large business "courtesy bid" by less than 10 percent. Saratoga Industries--Reconsideration, B-202698.2, Jan. 22, 1982, 82-1 CPD ¶ 47. Here, we see no evidence that the contracting officer abused his discretion in determining that Dunn's prices for the 50 percent small business kits, which were 30 percent higher than its prices for large business-manufactured kits, were unreasonable.

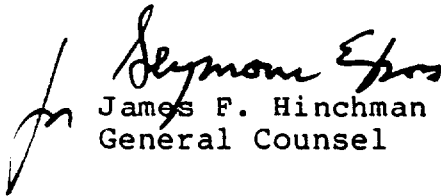
Since we believe that the contracting officer could reasonably have concluded, based on this comparison of the two prices that Dunn offered, that Dunn's revised prices were unreasonable, it is unnecessary for us to determine whether the pricing history for the penetrant process control kits cited by the contracting officer provided him with a separate basis for a determination of price

unreasonableness. See Flagg Integrated Systems Technology, B-214153, Aug. 24, 1984, 84-2 CPD ¶ 221. We therefore decline to consider the protester's objection to the agency's use of the price history.

With regard to Dunn's argument that the reasonableness of its price for the magnetic particle process control kits is demonstrated through comparison with the government estimate,^{1/} we have previously recognized that estimates of price are by nature inexact, and that other factors such as prior pricing patterns or currently offered prices from other sources may more accurately reflect current market conditions. Sylvan Service Corp., B-222482, July 22, 1986, 86-2 CPD ¶ 89. Here, the contracting officer determined that Dunn's original prices were more indicative of the fair market price for the kits than the Air Force's own estimate, and we see nothing inappropriate in such a determination.

Finally, Dunn argues that the Air Force should not have rejected its bid samples as unacceptable without first informing it of any deficiencies and allowing it an opportunity to correct them. We dismiss this basis of protest as academic given our foregoing conclusion that dissolution of the set-asides was justified. Since the Air Force has amended the RFPs to permit unrestricted competition, the acquisitions are no longer subject to the requirement that 50 percent of the value of the kits be accounted for by items manufactured by small business. Dunn will be given an opportunity to compete for the revised requirements.

The protests are denied in part and dismissed in part.


James F. Hinchman
General Counsel

^{1/} The contracting officer estimated the total value of the acquisition to be \$1,134,000 for an estimated quantity of 285 kits, which equals approximately \$3,980 per kit. Dunn's prices ranged between \$2,672.17 and \$3,773.12, depending on the number of kits ordered.