



The Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: Corrugated Inner-Pak Corporation

File: B-233710.2

Date: March 29, 1989

DIGEST

1. Protester, second low bidder, is not an interested party to challenge agency's cancellation of solicitation where protester does not raise a timely objection to the acceptability of the low bidder and protester thus would not be in line for award even if its protest were sustained.

2. Cancellation of invitation for bids and reissuance of solicitation as request for proposals is proper where the contracting officer reasonably determines that all the bid prices were unreasonably high and that revising the solicitation to reduce the term of the contract over which the items are to be supplied would result in more advantageous prices.

DECISION

Corrugated Inner-Pak Corporation protests the Defense Logistics Agency's (DLA) cancellation of invitation for bids (IFB) No. DLA140-88-B-0008 and resolicitation under request for proposals (RFP) No. DLA140-89-R-0005 for shipping containers. We dismiss the protest.

The IFB called for bidders to provide wax impregnated bi-wall shipping containers with and without pallet bases; insulation liners; and ice packs. The IFB required specified quantities of the items to be delivered every 30 days over an 18-month period to different locations set out in the IFB. The following three bids were received at bid opening: Habco Enterprises' low bid of \$1,007,112, Corrugated's second low bid of \$1,114,118, and Produce and Poultry's high bid of \$1,201,379.

After bid opening, the contracting officer determined that the low bid was up to 41 percent higher than the prices under the contract in the prior fiscal year, which in turn contained increases as high as 33.5 percent over the

previous year. The contracting officer found that these increases were not supported by comparable increases in the prior year of similar end items tracked in the Producer Price Index (PPI)^{1/}, or cost increases for individual components similar to those used to manufacture the containers. The contracting officer also concluded that the price increases were due, in part, to the 18-month delivery requirement in the IFB and the bidders' inability to obtain firm prices beyond a 12-month period. Consequently, the contracting officer canceled the solicitation on the basis that all bids were at unreasonable prices and resolicited under an RFP which reduced the quantity requirements from an 18-month supply to a 12-month supply. This protest followed.

Initially, DLA contends that Corrugated is not an interested party eligible to challenge the cancellation because Corrugated is not the low bidder and, thus, would not be in line for award if its protest were upheld. We agree.

To be eligible to pursue a protest, a party must be "interested" within the meaning of our Bid Protest Regulations, 4 C.F.R. §§ 21.0(a) and 21.1(a) (1988). An interested party is generally defined as an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by failure to award a contract. 4 C.F.R. § 21.0(a). Where a protester would not be in line for an award even if we were to resolve the protest in its favor, the firm generally lacks standing as an interested party. Motorola, Inc., B-232843, Nov. 16, 1988, 88-2 CPD ¶ 484. Here, the original protest lacked any allegation that the low bidder may have been ineligible for award. Since the protester thus would not be in line for award even if we were to sustain its protest, it is not an interested party to challenge the cancellation.

In its comments on the agency report--in which DLA argued that the protester lacks standing--Corrugated claimed for the first time that the low bidder is not a responsible firm. Although Corrugated states, and the record shows, that prior to filing the current protest, the protester raised this issue with DLA, this new allegation before us is untimely. Since the protester clearly was aware of this

^{1/} The Producer Price Index, prepared by the Bureau of Labor Statistics (BLS), measures average changes in prices received by domestic producers of commodities.

basis for challenging the low bidder's eligibility for award, it was required to raise the issue in its original protest in order for it to be considered. See Gel Systems, Inc.--Request for Reconsideration, B-233286.2, Mar. 8, 1989, 89-1 CPD ¶ ____.

In any event, we see no basis to object to DLA's decision to cancel the IFB and resolicit. Under Federal Acquisition Regulation (FAR) § 14.404-1(c)(6), cancellation of an IFB after bid opening is authorized where all otherwise acceptable bids received are at unreasonable prices. This determination may be based on comparisons with such things as government estimates, past procurement history, current market conditions, or any other relevant factors including any which have been revealed in the bidding. Picker International, Inc., B-232430, Dec. 12, 1988, 88-2 CPD ¶ 583.

Here, the contracting officer's determination was based on a comparison of the bids with prices under the two prior contracts and prices for similar items in the PPI. The protester disputes the agency's finding that the bid prices were unreasonable, arguing that the bids reflect recent increases in materials costs and other changes in market conditions. The protester also challenges DLA's reliance on the PPI on the basis that the items listed in the PPI are not identical to the items called for by the IFB.

We see no basis to question the contracting officer's determination that the bid prices were unreasonable. The protester's contention that the items listed in the PPI are not identical to those called for by the IFB is not persuasive. DLA itself states only that the items are similar, not identical, and the protester simply has made no showing that the PPI items are so different from those in the IFB that reliance on the PPI for price comparison was unreasonable.

In addition to the unreasonableness of the bid prices, cancellation of the IFB was consistent with FAR § 14.404-1(c)(9), which authorizes post-bid opening cancellation where circumstances dictate that such an action is clearly in the public's interest. As noted above, DLA found that the price increases were due in part to the 18-month term of the contract, and decided that revising the term to a 12-month supply would result in significantly lower prices. In this regard, the protester concedes that the current bids were significantly higher than those submitted in the prior year because of the 6 month difference in the contract terms. Given DLA's determination that changing the contract term would result in more

advantageous prices, cancellation of the IPS and reissuance of the solicitation with reduced supply requirements was justified. See Alden Electronics, Inc.--Reconsideration, B-224160.2; B-224161.2, Mar. 12, 1987, 87-1 CPD ¶ 277.

The protest is dismissed.



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