



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Interstate Commerce Commission--Request for
Reconsideration

File: B-237249.2

Date: April 16, 1990

Edward E. Guthrie, Interstate Commerce Commission, for the
agency.

Barbara C. Coles, Esq., Peter A. Iannicelli, Esq., and
Christine S. Melody, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Decision sustaining protest challenging agency's decision to
award to large business which submitted low quote on small
business-small purchase set-aside--based on agency's finding
that 6 percent higher quote from small business was
unreasonably high--is affirmed on reconsideration where,
even though price reasonableness was clearly put in issue in
the protest, agency gave no explanation as to why it found
small business's quote unreasonably high, and there is no
evidence in the record to show that the quote was
unreasonably high.

DECISION

The Interstate Commerce Commission (ICC) requests recon-
sideration of our decision, Vitronics, Inc., B-237249,
Jan. 16, 1990, 69 Comp. Gen. ___, 90-1 CPD ¶ 57, sustaining
Vitronics' protest challenging the issuance of a purchase
order to Concurrent Computer Corporation, a large business,
under request for quotations (RFQ) No. ICC-89-Q-0002,
issued as a small business set-aside under small purchase
procedures by ICC for maintenance and repair of electronic
equipment.

We affirm our prior decision.

ICC received three quotations in response to the RFQ, which
was issued pursuant to the small business-small purchase

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set-aside procedures of Federal Acquisition Regulation (FAR) § 13.105(d). Concurrent Computer, a large business, submitted the low quotation of \$19,384.72, while Vitronics, a small business, was second low at \$20,604. Subsequently, the contracting officer canceled the set-aside and made award to the low offeror, Concurrent Computer, pursuant to FAR § 13.105(d)(3), which provides that the contracting officer may cancel a small business-small purchase set-aside and complete the purchase on an unrestricted basis, if the contracting officer does not receive a reasonable quotation from a responsible small business concern.

Although ICC argued that it properly made award pursuant to FAR § 13.105(d)(3), we sustained Vitronics' protest because there was no indication in the record that ICC had determined Vitronics' quote to be unreasonably high in price and there was no evidence in the record to show that Vitronics' quote was, in fact, unreasonable. In this regard, ICC did not provide us with any explanation for its decision to make award to Concurrent Computer; instead, the agency merely cited FAR § 13.105(d)(3) and stated that Vitronics' price was higher than the awardee's price. Since there was no indication in the record that ICC had considered prior procurement history, current market conditions or a government estimate in making its determination, we found that the 6 percent price differential was not so large as to make Vitronics' price per se unreasonable.

In its reconsideration request, ICC claims that our decision--based entirely on the lack of evidence supporting the agency's determination that the protester's quote was unreasonable--reflects an abuse of discretion, because ICC did not have any knowledge of or opportunity to respond to the protester's argument that its price was reasonable. ICC asserts that the protester did not raise this allegation in its protest and failed to provide the agency with a copy of its comments on the agency report, which raised the issue of price reasonableness.

Parties to a protest, including contracting agencies, who fail to submit all relevant evidence to our Office in the expectation that we will draw conclusions beneficial to them do so at their own risk; it is not our function to prepare parties' defenses to allegations raised in the record. General Servs. Admin.--Request for Reconsideration, B-221089.2, June 16, 1986, 86-1 CPD ¶ 553. Here, the issue of ICC's award of a contract to a large business following the cancellation of the set-aside was raised in the initial protest letter. Moreover, ICC itself raised the issue of the reasonableness of Vitronics' price in its report when it asserted that Vitronics' quotation was rejected and award

was made to Concurrent Computer under FAR § 13.105(d)(3), which authorizes the contracting officer to cancel a small business-small purchase set-aside if a reasonable quotation has not been received from a small business concern.

While it is unfortunate that ICC did not receive a copy of the protester's comments on the report, that fact is not dispositive, since price reasonableness was inherently part of the protest and was explicitly put in issue by ICC in its report on the protest. ICC thus should have known that it had to provide adequate documentation to show that the set-aside was properly canceled because a reasonable quotation had not been received from a responsible small business. Absent any such evidence, we properly concluded that the award was objectionable.

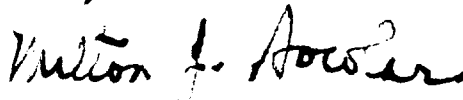
In any event, even fully considering the arguments now made by ICC to support its decision, we see no basis to reverse our prior decision. ICC contends that it is in the midst of a budget crisis, and, therefore, award to the protester at a price approximately \$1,200 higher than the low quotation would have been "unconscionable." Among other things, ICC states that its overall budget has been reduced by approximately \$1 million and that it has been forced to absorb the 3.6 percent pay increase granted all federal workers as of January 1, 1990.

A small business bidder's price is not unreasonable merely because it is greater than the price of an ineligible large bidder, since there is a range over and above the price submitted by the large business that may be considered reasonable in a set-aside situation. See Browning-Ferris Indus., B-209234, Mar. 29, 1983, 83-1 CPD ¶ 323. The only requirement is that the cost of awarding the contract not exceed the fair market price. See FAR §§ 19.202-6, 19.501(j).

Here, ICC has not shown that Vitronics' quote was unreasonably high or exceeded a fair market price. ICC has provided no information regarding a government estimate, prior procurement history, or market conditions to show that Vitronics' price was unreasonable. The fact that one large business offers a lower price than a small business vendor does not itself establish that the small business price is unreasonable or exceeds a fair market price. See, e.g., Artisan Elecs. Corp., B-231700, Aug. 23, 1988, 88-2 CPD ¶ 174; Artisan Elecs. Corp., B-230306, May 4, 1988, 88-1 CPD ¶ 438. Moreover, even though ICC, like many other government agencies, has experienced budget cuts and additional expense due to federal pay raises, those facts alone do not make Vitronics' bid unreasonable, particularly

in light of the relatively small difference (\$1,220, or 6 percent) between Vitronics' quote and the large business's courtesy quote.

The prior decision is affirmed.

A handwritten signature in dark ink, appearing to read "Milton L. Aouin". The signature is written in a cursive style with a large initial "M".

Acting Comptroller General
of the United States