145774

Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Reynolds Metals Company

File: B-245709; B-245718

Date: January 29, 1992

John B. Denniston, Esq., and Michele J. Woods, Esq., Covington & Burling, for the protester.
Jewel L. Miller, Esq., and Rodney H. Ficker, Esq., Defense Logistics Agency, for the agency.
Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's cancellation after bid opening of invitation for bids for the upgrade, or conversion, of bauxite ore into aluminum metal ingots was proper where the agency could not determine that the most favorable bid submitted was reasonable in light of its own estimates which have not been shown to be incorrect.

DECISION

Reynolds Metals Company protests the cancellation of invitation for bids (IFB) No. DLA300-91-B-0018R, issued by the Defense Logistics Agency for the upgrading of government-furnished bauxite ore into aluminum metal ingots, and the agency's subsequent decision to resolicit its requirements as a negotiated procurement under request for proposals (RFP) No. DLA300-91-R-0018R. Reynolds challenges the agency's determination that its bid under the canceled IFB was unreasonably priced and further contends that the agency should have awarded it a contract under the canceled IFB.

We deny the protest.

The IFB was issued on July 30, 1991. The IFB schedule contained two line items which specified quantities of ore to be furnished by the government for conversion by the contractor into ingots: line item No. 0001 provided 76,357 long dry tons (LDTs) of Suriname bauxite ore to be removed from the government's Texarkana, Texas site and line item No. 0002 provided 87,417 LDTs of Jamaican bauxite ore to be removed from the contractor's choice of one of four government sites, all of which corresponded to the refinery locations of the major aluminum manufacturers expected to participate in the competition. For each of these line items, a contractor was required to insert in the space provided on the schedule the quantity, in short tons, of ingots which it would process and deliver to the government. The IFB stated that a contract would be awarded to the contractor whose total quantity of delivered ingots was most advantageous to the government. The IFB stated that multiple awards (a single award for each line item) could be made.

Basically, the IFB contemplated a barter-type exchange where the government would furnish to the contractor definite quantities of ore to process into contractor-designated quantities of ingots. As compensation for the contractor's firm, fixed costs of processing (e.g., its costs for transporting and handling the ore from the various government sites to its refinery, its costs for borrowing money to finance its operations under this procurement, and its other related processing costs) and in exchange for the contractor's delivered quantity of ingots, the government would furnish the contractor with a predetermined quantity of ore for use in its own operations. As a contractor's processing costs increase, the value to the government of the quantity of ingots processed and delivered by the contractor decreases in comparison to the value of the ore furnished by the government to the contractor.

Reynolds and two other firms--Kaiser Aluminum and Chemical Company and Aluminum Company of America (ALCOA)--submitted bids by bid opening on August 29. In its bid, Reynolds designated the quantity of ingots which it would process and deliver to the government based on the two line item quantities of ore furnished by the government. In its bid, Kaiser designated a quantity of ingots for each of the two line items that was almost 100 percent less than Reynolds' designated quantity of ingots for each of the two line items. Kaiser also qualified a material term of the IFB involving the length of time for removal of the conversion and payment ore from the government's storage sites. In its bid, ALCOA designated a quantity of ingots for line item No. 0001 that was approximately 73 percent less than Reynolds' designated quantity of ingots for line item No. 0001. Unlike Reynolds, ALCOA did not designate a quantity of ingots for line item No. 0002.

The agency evaluated all three bids. Kaiser's bid was rejected as nonresponsive because it took exception to a material requirement of the IFB and ALCOA's otherwise responsive bid for line item No. 0001 was rejected as unreasonably priced. While Reynolds submitted the most advantageous bid in terms of the quantity of ingots to be supplied to the government, its bid also was rejected as unreasonably priced. The agency concluded that this barter-type transaction would yield an unequal exchange substantially in favor of Reynolds. The agency found that the value of the return to the government was unreasonably low and that the government would lose $10 million in the exchange because of unreasonably high processing costs (by approximately $15-$20 million) claimed by Reynolds.

Because the agency received no reasonably priced bids, by letter dated September 10, it notified all three firms that it was canceling IFB No. DLA300-91-B-0018R and converting from a sealed bid procurement to a negotiated procurement by issuing RFP No. DLA300-91-R-0018R. On September 17, following the rejection of its otherwise responsive bid as unreasonably priced and the agency's conversion to a negotiated procurement, Reynolds filed these protests.

Reynolds challenges the agency's rejection of its bid as unreasonably priced on the basis of its processing costs. Reynolds asserts that the quantity of ingots it has agreed to deliver is reasonable because it properly represents its legitimate transportation, handling, management, and interest costs.

An IFB may be canceled after bid opening only where there is a cogent and compelling reason to do so. Federal Acquisition Regulation (FAR) § 14.404-1(a)(1). A cogent and compelling reason exists when all otherwise acceptable bids received are at unreasonable prices, or only one bid is received and the agency cannot determine the reasonableness of the bid price. FAR § 14.404-1(c)(6). Here, the agency's determination to reject Reynolds' bid was based on its own estimates, which have not been shown to be incorrect, of what a bidder's processing and transportation costs should be.

Documents submitted during the course of this protest show that there was a significant disparity between the agency's estimates and Reynolds' asserted costs, primarily because of differences in transportation and handling costs. For line item No. 0001, the agency based its transportation and handling cost estimates on delivery at destination--Reynolds' refinery, considering on-site transportation as a cost that should be reflected in the normal operating expenses of a refinery. Reynolds' transportation and handling costs, however, were based on substantial costs for on-site transportation and handling, including a 10 percent management fee, for loading, transporting, and handling the government ore.

Specifically, in its calculations, Reynolds used a 3-step approach to estimate its total transportation and handling costs. First, based on a fixed-price quote from a truck/barge carrier which it apparently intended to hire if awarded a contract, Reynolds calculated its basic transportation and handling costs from the four government sites in Texas, Alabama, and Arkansas to the barge dock at its refinery. The carrier stated in its quote that it would

> "mov[e] the bauxite ore from [the] various government stockpiles to the Reynolds . . . [p]lant in Gregory, Texas [and that its rates were] from the ground at the different sites to [Reynolds'] conveyor belt at the destination."

Based on the carrier's quoted rates, Reynolds' basic costs to transport and handle the ore (approximately 30 percent of the total IFB amount) from these sites to the barge dock at its refinery would total millions of dollars. Second, Reynolds, based on an in-house estimate, added additional costs totaling 15 percent of its basic costs of transportation and handling, to move the ore from the barge dock to its refinery, a distance of 600 feet. Third, Reynolds added a management fee of 10 percent to its total transportation and handling costs.

On this record, we must conclude that the agency's view of Reynolds' bid was not unreasonable. In this regard, in light of the carrier's statement that it would move the ore from the government stockpiles to Reynolds' conveyor belt at its refinery, the additional 15 percent transportation and handling costs in the second step of Reynolds' calculation may duplicate costs for services agreed to be provided by the carrier, or at the very least, may significantly overstate the costs for transportation and handling once the ore reaches Reynolds' refinery. Without a more detailed explanation of the precise transportation and handling costs which Reynolds would incur, we have no basis for viewing this aspect of the agency's estimates as erroneous.

We reach a similar conclusion with regard to the transportation and handling cost estimates for moving the remaining 70 percent of the ore a distance of less than 1 mile from the on-site location of the government's stockpile to Reynolds' refinery in Gregory, Texas. The agency believed that Reynolds would incur no significant transportation and handling costs for the ore located on the site of its refinery or that these costs were normal costs of operations for materials-in-process at the refinery and were reflected in the value of the ingots processed at the refinery.

Reynolds, however, argues that even to move the ore less than 1 mile, it would incur substantial costs which its estimates show to be equal to approximately 59 percent of the cost to move approximately 30 percent of the ore from the government's four specifically designated sites in

Texas, Alabama, and Arkansas, as discussed above, to Reynolds' refinery in Gregory, Texas.

While we recognize that the on-site quantity of ore is more than two times greater than the off-site quantity of ore and that Reynolds reasonably could incur some on-site transportation and handling costs as normal operating expenses of the refinery, we find that Reynolds' substantial estimate of its on-site costs for transportation and handling, including its management fee, is not supported by the record. Reynolds provided a lump-sum, in-house cost estimate without a breakdown, for example, of the number of personnel, manhours, and trucks which would be needed to perform the on-site services. Without a detailed breakdown of Reynolds' on-site transportation and handling costs, we have no basis to conclude that the agency's estimating approach is incorrect.

Accordingly, given Reynolds' apparent duplication of transportation and handling costs for the first line item and its lack of sufficient explanation for its asserted on-site transportation and handling costs for the second line item, we find that the agency's reliance on its own estimates to conclude that the Reynolds' bid was unreasonable, or, with respect to the second line item for which the Reynolds' bid was the only responsive bid received, that it could not determine the reasonableness of the bid, is not legally objectionable.[1]

The protest is denied.

Ronald Berger

for James F. Hinchman
General Counsel

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[1] Further, Reynolds argues that the agency should have used ALCOA's price under a 1990 contract, which the agency had found reasonable, to establish the reasonableness of its price. However, Reynolds' argument is misplaced for the following reasons: (1) the 1990 ALCOA contract involved a cash transaction for the upgrade of ore into ingots instead of a payment-in-kind transaction; (2) substantially greater quantities of ore and ingots were involved in ALCOA's 1990 contract; and (3) the market conditions affecting the value of ore and aluminum were different in 1990.