



Comptroller General
of the United States

Washington, D.C. 20548

Decision

250124

Matter of: Stitzziel Company

File: B-251560

Date: April 13, 1993

William Stitzziel for the protester.
Capt. Gerald P. Kohns, Department of the Army, for the agency.
John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly canceled small purchase, small business set-aside, and purchased the requirement from other than a small business, where the only quotation received from a small business exceeded an offer from other than a small business by approximately 12 percent and the government estimate by approximately 22 percent.

DECISION

Stitzziel Company protests the award of a purchase order to the American Red Cross under request for quotations (RFQ) No. DADA09-93-Q-0042, issued as a small business set-aside under small purchase procedures by the Department of the Army for freeze dried bone. Stitzziel argues that the Army improperly dissolved the small business set-aside and awarded the contract to other than a small business.

We deny the protest.

The RFQ was issued as a small business set-aside under the small purchase procedures of Federal Acquisition Regulation (FAR) § 13.105, and specified the American Red Cross as the only acceptable source for the bone. The American Red Cross, which is other than a small business concern, submitted the low quote of \$11,140. Stitzziel, a small business, was next low at a total price of \$12,512.68. No other quotes were received. The government's estimated fair market price for the requirement was \$10,265.

The agency determined to award the contract to the American Red Cross under FAR § 13.105(d)(3), which authorizes the cancellation of a small business, small purchase set-aside, and the completion of the purchase on an unrestricted basis if the agency does not receive a reasonable quotation from a small business. The Army states that it decided to cancel the set-aside because the protester's price significantly exceeded the awardee's price and the government's estimated fair market price. The cognizant small business specialist agreed that the protester's price was unreasonable and that cancellation of the set-aside was appropriate.

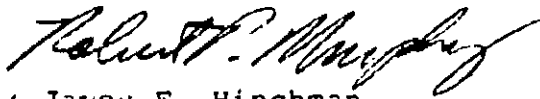
Stitzel protests the agency's determination as to the reasonableness of its price, and the agency's subsequent cancellation of the set-aside and award to the American Red Cross.

The contracting officer has discretion to determine price reasonableness in a small business or other set-aside, and we will not disturb such a determination unless it is unreasonable. Cleager, Inc., B-240789.6, Oct. 11, 1991, 91-2 CPD ¶ 328. In making such a determination, the contracting officer may consider such factors as the government's estimate, the procurement history for the solicited supplies or services, the current market climate, or the "courtesy bid" of an ineligible other than small business. See FAR § 13.106(c)(1); Western Filter Corp., B-247212, May 11, 1992, 92-1 CPD ¶ 436. Our Office has upheld the agency's determination to cancel a small business set-aside where the lowest eligible small business price exceeded the basis for comparison by as little as 7.2 percent. Building Maintenance Specialists, Inc., B-186441, Sept. 10, 1976, 76-2 CPD ¶ 233; see also Saratoga Indus.--Recon., B-202698.2, Jan. 22, 1982, 82-1 CPD ¶ 47 (agency properly found small business price unreasonable where it exceeded the basis for comparison by 9.6 percent).

Stitzel's quotation exceeded the American Red Cross's price by approximately 12 percent and the government's estimated fair market price by approximately 22 percent. This differential reasonably supports the cancellation of the set-aside, since the record does not otherwise cast doubt on the agency's determination. Western Filter Corp., supra. In this regard, the protester does not challenge the government's estimate as unreasonably low or otherwise inaccurate, nor does the protester question the validity of the American Red Cross's quote--which was the same amount as it quoted to Stitzel. In addition, as noted by the agency, since the American Red Cross directly ships the product to the medical facility, the protester's responsibilities under the purchase order are limited and the agency found that they were not worth the premium sought by Stitzel.

Stitzziel argues that the award to the American Red Cross was made in bad faith. The protester, however, does not offer, nor does the record contain, any evidence of bad faith with regard to the agency's determination to make award to the American Red Cross. Prejudicial motives will not be attributed to contracting officials on the basis of unsupported allegations, inference, or supposition. Marine Animal Prods. Int'l, Inc., B-247150.2, July 13, 1992, 92-2 CPD ¶ 16.

The protest is denied.


for James F. Hinchman
General Counsel