P. Williams
149389

Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Selecta Corporation

File: B-252182

Date: May 26, 1993

Don Rumage for the protester.
Gail Booth, Esq., Defense Logistics Agency, for the agency.
Paula A. Williams, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Contracting agency reasonably canceled a request for proposals where it could not determine that the only offer received was at a fair and reasonable price.

DECISION

Selecta Corporation protests the cancellation of request for proposals (RFP) No. DLA770-92-R-5743, issued by the Defense Construction Supply Center, Defense Logistics Agency (DLA) for 446 vehicle maintenance ladders. The agency's decision was based on its inability to determine that Selecta's offer, the only one received, was at a reasonable price. The protester argues that its price was reasonable as it is in line with the prices paid by the agency for past purchases of this item.

We deny the protest.

The vehicle maintenance ladder, identified by National Stock Number (NSN) 4910-01-299-5743 and by Selecta Code and Part Number (P/N) ERC-106-WA, was originally designed, developed, and manufactured by Selecta to provide easy reach access for mechanics during truck or automobile maintenance. DLA's previous acquisitions were usually for only 1 ladder, with the largest single acquisition being for 11 ladders. Selecta has been the only supplier of the item to DLA since 1991. For each of the six prior awards, DLA determined that Selecta's unit price of $700.60 was fair and reasonable because the setting-up-costs, which DLA states remain the same regardless of the number of ladders supplied, were allocated to a very small number of ladders.

On April 8, 1992, DLA issued the instant solicitation for a quantity of 446 ladders. Selecta was the sole offeror, quoting a per unit price of $722.31. The agency compared Selecta's per unit price with the government's $196.65 per unit estimated cost of manufacturing the ladder, and questioned whether Selecta had allocated its fixed costs over the larger quantity being solicited. In order to determine the reasonableness of Selecta's price, DLA asked Selecta to submit a cost breakdown After initially refusing to do so, on January 4, 1993, Selecta submitted cost data to the contracting agency. The agency reviewed this cost data but found it inadequate to allow the contracting officer to make a determination that Selecta's price was fair and reasonable. On January 20, the agency canceled the solicitation since Selecta's price could not be determined fair and reasonable and there were no other offers.

Selecta argues that the agency did not have a reasonable basis to cancel the solicitation since its offered price was less than the prices established by the government for the ladder. Specifically, the protester states that in 1987 it initially set the price for the ladder at $620.00; thereafter, the government established a price of $700.60 for the ladder. In 1992 and 1993, the government reestablished a price for the ladder at $998.35 and $820.39, respectively. These prices, the protester points out, were quoted in a government-published Supply Bulletin No. 700-20.

In a negotiated procurement such as this, the contracting agency has broad authority to decide whether to cancel a solicitation and need only establish a reasonable basis for the cancellation. See Federal Acquisition Regulation (FAR) § 15.608(b). Contracting officers are required to purchase at "fair and reasonable" prices, FAR § 15.802(b)(1), and cancellation of a solicitation is warranted when the contracting officer cannot do so. See FAR §§ 14.404-1(c)(6), 15.608(b)(1) and (4); Hoboken Shipyards, Inc., B-223581; B-223965, Sept. 19, 1986, 86-2 CPD ¶ 324. A determination concerning price reasonableness is a matter of administrative discretion involving the exercise of business judgment, which our Office will not question unless that determination is unreasonable or the protester demonstrates fraud or bad faith on the agency's part. Porter-Cable Corp., B-227401, June 19, 1987, 87-1 CPD ¶ 618.

We conclude that DLA was reasonable in its inability to determine if Selecta's offer was reasonably priced and in cancellation of the solicitation. The prices appearing in the Supply Bulletin are the prices which DLA charges its government customers for the ladder. These prices merely reflect Selecta's price to the agency for the ladder plus a surcharge[1], and do not reflect any independent government estimate concerning the actual cost of manufacturing the ladder. Thus, the prices set by DLA for its government customers do not establish that Selecta's price was reasonable since the DLA pricing primarily reflects the prices previously paid to Selecta by DLA for very limited ladder quantities.

Selecta also maintains that its price, rather than the government estimate, more accurately reflects the true manufacturing costs for this item. According to the protester, its unit price reflects engineering improvements such as redesigning the ladder's outrigger to decrease storage space when not in use, reengineering the body rest for the comfort of the mechanic and improving the braking system for the ladder.

An agency properly may base a determination of price reasonableness upon comparisons with such things as government estimates, past procurement history, current market conditions or any other relevant factors. See, e.g., The W.H. Smith Hardware Co., B-221792, May 9, 1986, 86-1 CPD ¶ 446; Sylvan Serv. Corp., B-222482, July 22, 1986, 86-2 CPD ¶ 89. Here, the agency used the detailed cost breakdown prepared by DLA's Value Engineering Division which had recently performed a reverse engineering program so that the ladder could be procured competitively. This comparison revealed that Selecta's price was more than three times as high as the manufacturing costs for the ladder. Selecta argues that its price reflects enhanced engineering features, but has not provided any detailed cost breakdown, which explains the disparity in cost between its offered price and the government estimate. Further, while Selecta asserts that DLA's estimate does not reflect the cost of design testing and inspection, DLA has explained that these costs were included under overhead. Accordingly, we have no basis to question the method used by the agency in developing its estimate, and we conclude that DLA properly relied on this estimate in evaluating Selecta's price.

In addition, under FAR § 15.608(b)(4), the procuring agency may reject all proposals where cancellation of the solicitation is clearly in the government's best interest. Pursuant to this regulation, a procuring agency may cancel a

[1]The surcharge, added to cover the actual costs incurred by the agency in providing the ladder, includes transportation, wholesale losses, retail losses, inflation, price stabilization factors and operating costs. Operating costs include acquisition costs, depot operation costs, supply management costs, technical/cataloging costs, real property maintenance costs and a portion of DLA overhead.

negotiated procurement based on the potential for increased competition. Gradwell Co. Inc., B-230986, July 7, 1988, 88-2 CPD ¶ 19. Here, after receipt of Selecta's proposal, DLA learned that a data package had been developed which would permit increased competition and potential cost savings. This possibility properly provided a basis for cancellation and resolicitation apart from the question of the reasonableness of Selecta's price. See Bell Indus. Inc., B-233029, Jan. 25, 1989, 89-1 CPD ¶ 81.

The protest is denied.

for James F. Hinchman
General Counsel