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DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

[Protest of Bid Rejection for Unreasonableness] 094780

FILE: B-181057 DATE: July 23, 1974

MATTER OF: C. J. Coakley Company, Inc.

DIGEST: Contracting officer's cancellation of IFB because two bids received were excessive and subsequent negotiation of contract was proper, regardless of fact that error in Government estimate was subsequently discovered increasing amount of estimate, since bids as compared with revised Government estimate were still considered excessive. Moreover, protester's allegation, that GSA knew its low bid was reasonable but refused to sustain its protest under mistaken belief that it (GSA) lacked authority to do so, is viewed as academic and will not be considered since GSA denies ever having considered protester's bid reasonable.

On March 14, 1974, the General Services Administration (GSA) opened bids responding to an invitation for bids (IFB) for the construction of wall and ceiling systems at the Washington Technical Institute located in Washington, D.C. The following two bids were received:

C. J. Coakley Company, Inc.	$935,977
John H. Hampshire, Inc.	993,000

The bids were determined to be respectively 24 percent and 32 percent above the Government's estimate of $753,717.00 for the contract work, thereby raising the question of whether the bids were unreasonable, should be rejected, and negotiations undertaken in accordance with the provisions of Federal Procurement Regulations (FPR) 1-2.404-1(b)(5) and 1-3.214. It should be noted at this point that the protester, C. J. Coakley, uses its own bid as the base for cost comparison, i.e., the Government's estimate of $753,717 is 19 percent less than Coakley's bid price of $935,977 rather than the protester's bid being 24 percent higher than the Government estimate.

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After a careful review of its estimate and deliberation by the Board of Award, the Government's Construction Manager, and the contracting officer, it was concluded that the bids were unreasonable. Accordingly, the bidders were notified by letters of April 5, 1974, that their bids had been determined to be unreasonable and that negotiations would be undertaken. Government representatives met with Coakley on April 12 and Hampshire on April 15 for the purpose of pinpointing the reason why the bids exceeded the Government's estimate by such a substantial margin. Even though the basic estimates were reviewed in considerable detail, the Government was unable to find any item that appeared excessive or unreasonable.

On April 10, 1974, Coakley protested to our Office against the determination that its bid was unreasonable. In support of its protest Coakley cited the fact that Hampshire's bid was even higher than its own bid, and therefore the Government's estimate must be incorrect.

On May 3, 1974, the proposals submitted pursuant to negotiations were opened and they were in the following amounts:

John J. Hampshire, Inc.	$877,565
C. J. Coakley Co., Inc.	894,400

After a Findings and Determination of urgency pursuant to FPR 1-2.407(b)(3) and (4)(ii), the contracting officer, awarded the contract to Hampshire on May 13, 1974, without awaiting the resolution of the protest.

At some time subsequent to bid opening a mathematical error in excess of $47,000 was discovered in the Government's estimate, which raised it to $800,351.

In its letter of May 30, 1974, Coakley maintains that GSA did not devote sufficient effort to assure itself that Coakley's bid price was in fact unreasonable, and that GSA's attempt to verify its estimate was inadequate in light of the unstable economic conditions and the fact that two experienced contractors had submitted bid prices which exceeded the Government estimate. Coakley points out that GSA's verification efforts failed to uncover the above mentioned mathematical error, and that GSA was aware of the unstable economic conditions and their effect on building costs as evidenced by the increase in the Government's estimate from $681,000 in November 1973, to $753,000 in March 1974, a 10.5 percent increase.

In further support of its contention that its bid price was not unreasonable, Coakley points out that even after negotiations GSA was only able to obtain a low proposal of $877,565, which is only 6.3 percent ($58,421) less than Coakley's low bid or approximately 9.5 percent above the Government estimate. Coakley states that even the figure of $58,421 is an overstatement of the reduction in price obtained by rejecting the bids and negotiating, since after the bids were rejected GSA issued Amendment No. 9 which stated that site office, change room, and storage space facilities would be provided the contractor at no cost. According to Coakley these changes permitted a cost savings of $23,990 and if this cost savings is taken into consideration the actual difference between Coakley's low bid and the award price is only approximately $34,000, or 3.5 percent.

Coakley maintains that under the above circumstances, GSA recognized that the bid price of Coakley was not unreasonable, but refused to sustain Coakley's position, assuming erroneously that it (GSA) lacked the legal authority to sustain the protest.

There is no question concerning GSA's authority to cancel the IFB if the bid prices are unreasonable and to negotiate. FPR 1-2.404-1(b)(5) states that invitation for bids may be cancelled after opening but prior to award when "all acceptable bids received are at unreasonable prices" and FPR 1-3.214 permits negotiation without formal advertising if the bid prices after advertising are not reasonable. Also, section 10(b) of Standard Form 22, which was included in the IFB, provides that "The Government may, when in its interest reject any or all bids * * *." The primary question would appear to be whether GSA was justified under the circumstances in canceling the IFB. As previously mentioned, at bid opening Coakley's bid under the IFB was 24 percent above what was then the Government's estimate, i.e., $753,717. Actually the Government estimate at that time, had the mistake been discovered, should have been $800,851. However, even if we use this figure, Coakley's bid of $935,977 was still approximately 17 percent higher than the Government's estimate. This Office has upheld the rejection of bids and readvertisement where the lowest eligible bid exceeded the Government's estimate by as little as 16 percent, 36 Comp. Gen. 364 (1956).

Regarding Coakley's contention that even after negotiations, GSA was only able to obtain a low proposal of $877,565, which is

a mere 6.3 percent less than Coakley's low bid of $935,977 and that even this difference is suspect in light of the $23,990 cost savings permitted by Amendment No. 9, mentioned above, it should be pointed out that the contracting officer did not have the benefit of the proposal prices when he made his decision to reject all bids. Furthermore, upon such rejection the original bids are no longer material or effective for any purpose whatsoever, 36 Comp. Gen. 364, supra. In addition, GSA states that the cost saving realized by Amendment No. 9 would be $5,180 rather than $23,990. Regardless of which figure is used, the fact remains that even in retrospect Coakley's bid price would be considered excessive. In this regard, we were advised by GSA that on jobs of the nature here involved if the bid price is within approximately 10 percent of the Government estimate it is considered reasonable. Thus, even if we were to reduce Coakley's bid price by $23,990, its bid would still be approximately 12.5 percent above the Government's estimate. Moreover, the negotiations did result in a proposal price which GSA considered reasonable.

In reference to Coakley's contention that GSA did not devote sufficient effort to assure itself that Coakley's bid price was in fact unreasonable, and that GSA's attempt to verify its estimate was inadequate, we are advised that the services of a construction manager, who was presumably competent, were retained in order to assist GSA in the preparation of its estimates. The major services furnished by the construction manager were continuous market surveying, projection of costs trends, and the preparation of estimates at frequent intervals. The record indicates that the construction manager's original estimate made in November 1973 was reviewed by GSA's Cost Engineering Branch (who are also regularly engaged in preparing Government estimates on construction work and also make every effort to keep themselves informed of price escalation trends) and it was concluded that the estimate was sound. And, as pointed out by Coakley, the Government was aware of unstable economic conditions since the Government's March 1974 estimate was revised upward to $753,000. Moreover, after bid opening the estimate was carefully reviewed and nothing was discovered which would indicate that the estimate was inaccurate. While a $47,000 error in the Government's estimate was subsequently discovered, we are unable to find that the contracting officer's acceptance of the Government's estimate was without a reasonable basis since the record indicates that every possible effort was made to assess the accuracy or inaccuracy of the Government's estimate.

Concerning Coakley's contention that the fact that two bidders, themselves and Hampshire, submitted bids which were substantially higher than the Government's estimate established that the Government's estimate was erroneous, we do not believe that such a fact, standing alone, is sufficient evidence to establish the reasonableness of the bidders' prices and the unreasonableness of the Government's estimate. To rule otherwise would permit Government estimates to be negated at any time a bidder's price was not in line with the estimate, merely by evolving a possible hypothesis which might explain its higher bid. However, we do feel that when such circumstances occur the agency should be on notice of a possible error in its estimate, and should, as was done here, carefully review its estimate.

Under the circumstances, we are unable to conclude that the contracting officer's determination, that the prices received were excessive and should be rejected, was an abuse of the broad discretion vested in the contracting officer, or that such decision was without a cogent or compelling reason. 47 Comp. Gen. 103 (1967); 50 id. 177 (1970).

Finally, Coakley maintains that GSA recognized that the bid price of Coakley was not unreasonable, but refused to sustain Coakley's position, assuming erroneously that it (GSA) lacked the legal authority to sustain the protest. GSA denies that it ever recognized that Coakley's bid price was reasonable. Consequently, the question of GSA's legal authority to sustain Coakley's protest is an academic issue and will not be considered.

For the above reasons, the protest is denied.

Deputy Comptroller General
of the United States