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*Roberts
Proc. Law*

DECISION



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

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FILE: B-192878

DATE: February 15, 1979

MATTER OF: Jig Boring Specialties, Inc.

DIGEST:

Where low small business bid is 67 percent higher than bid price submitted by firm determined not to be a small business, which contracting officer, notwithstanding allegation that such bid price is a "buy-in", believes represents price that can be obtained on open market, agency acted reasonably in canceling and withdrawing total small business set-aside procurement to resolicit on unrestricted basis.

Jig Boring Specialties, Inc., a small business, protests both the cancellation of Invitation for Bids No. DAAA-09-78-B-2135 (first IFB), a total small business set-aside, and the subsequent resolicitation on an unrestricted basis under Invitation for Bids No. DAAA-09-78-B-2200 (second IFB). Both IFBs were issued by the U.S. Army Armament Materiel Readiness Command for the procurement of machine gun reflex sights. Based on our analysis of the record, which follows, the protest is denied.

Nine bids were received in response to the first IFB. As second low bidder, Jig Boring challenged the small business status of the apparent low bidder, Optic-Electronic Corp., and, subsequently, the Small Business Administration found Optic to be "other than a small business" for purposes of the procurement. As a result, the Army removed Optic from award consideration and, after reviewing the remaining eight bids, canceled the first IFB on the basis that those bid prices were unreasonably high. The total small business set-aside was then withdrawn and the unrestricted second IFB was issued.

Cancellation of an IFB after bid opening is authorized when all the acceptable bids received are at unreasonable prices. Defense Acquisition Regulation (DAR) §2-404.1(b)(vi) (1976 ed.); Hercules Demolition Corporation, B-186411, August 18, 1976, 76-2 CPD 173. The contracting officer must determine the reasonableness of price (DAR §1-706.3(a)) and we will not second guess a contracting officer's determination in this matter absent a showing of unreasonableness. North American Signal Company--Reconsideration, B-190972, August 4, 1978, 78-2 CPD 87 and decisions cited therein.

The Army's position is that the contracting officer's determination was reasonable because Jig Boring's bid was 67 percent higher than the low nonresponsive large business bid submitted by Optic. Jig Boring points out, however, that the Army failed to consider that the majority of the small business bids were in line with previous Government contract prices for the same items, and were, in fact, less than the Government estimate for the instant requirement. The Army reports that the contracting officer disregarded the Government estimate because it was based on the last price paid for this item with an arbitrary inflation factor of 25 percent added to it, and he thought the item could be procured on the open market at the reasonable price bid by the large business.

In this regard, we have held that large business bids on small business set-aside procurements may be considered in determining whether small business bids submitted on the procurement are reasonable. Tufco Industries, Inc., B-189323, July 13, 1977, 77-2 CPD 21. Concerning the Army's lack of comparison of small business bids with previous contract prices and the Government estimate, we have stated that the mere fact that a bid is "below the * * * Government estimate has little bearing on the reasonableness of that bid price." McCarthy Manufacturing Company, 56 Comp. Gen. 369 (1977), 77-1 CPD 116.

Although Jig Boring maintains that the Optic bid was a "buy-in" and should have been disregarded, we believe the contracting officer, in his discretion, could conclude that even an unusually low bid represents a price which reasonably could be expected to be obtained on the open market. That is all that happened here.

Moreover, responses to the second IFB proved this determination to be correct as three bidders (including Optic) submitted prices in the range of Optic's first IFB bid. In fact, the apparent low bidder under the terms of the second IFB is a small business which has bid significantly less than Optic.

The protest is denied.

Atkinson
Deputy Comptroller General
of the United States