18065 Golden

DECISION

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

[Reconsideration of Timeliness Decision]

FILE: B-201389.2 DATE: May 11, 1981

MATTER OF: Fowler's Refrigeration and Appliance, Inc.--Reconsideration

DIGEST:

1. Protest timely filed with contracting agency and subsequently filed with this Office within 10 days of formal notification of or actual or constructive knowledge of initial adverse agency action will be considered timely.

2. Protest that revised solicitation should be canceled because percentage by which low bid price exceeded Government estimate is greater than percentage by which low bid price exceeded Government estimate in canceled initial solicitation is denied because basis for cancellation was revised scope of work and cost estimate, not price unreasonableness, and low price under resolicitation has been determined reasonable.

Fowler's Refrigeration and Appliance, Inc. (Fowler), requests reconsideration of one issue in our decision in Fowler's Refrigeration and Appliance, Inc., B-201389, March 25, 1981, 81-1 CPD 223. Fowler protested the cancellation of invitation for bids (IFB) No. N62470-80-B-2925 and the proposed award by the Navy under a revised IFB. Fowler contends that we incorrectly determined untimely its protest of the Navy's failure to cancel the second solicitation because the low bid was excessive compared to the Government estimate. We found the issue untimely because the protest was not filed with GAO within a reasonable time after the opening of bids.

We based our decision in this regard on the fact that bids were opened on October 7, 1980, under the revised IFB, but that this protest was not filed until

016832 115180

December 1, 1980, nearly 2 months after the basis could have been discovered if inquiry as to the amount of the Government estimate had been made. In our view the time taken to ascertain the basis for this aspect of the protest was unreasonably long under decisions such as National Council of Senior Citizens, Inc., B-196723, February 1, 1980, 80-1 CPD 87. Those decisions hold that a protester's failure to diligently pursue the matter by seeking within a reasonable time the information which reveals the basis for protest requires a rejection of the protest as untimely.

In support of its contention that the issue was timely raised, Fowler submits a copy of a letter it sent to the Navy on October 10, 1980, protesting the revised IFB bid procedure and stating its view that the lowest bid price exceeded the Government estimate by more than 20 percent and should have been rejected as excessive. Fowler also submitted a reply from the Navy dated November 13, 1980, denying its protest. Although we do not know when the Navy letter was received by Fowler, it appears the protest was timely filed with this Office on December 1 (within 10 days of notice of adverse agency action), under our Bid Protest Procedures, allowing several days for Fowler to receive the November 13 letter by mail in the ordinary course of business. 4 C.F.R. § 20.2(a) (1980); see Mountain Valley Nursery, Inc., B-201423, January 6, 1981, 81-1 CPD 10. Therefore, we will consider Fowler's contention on the merits.

Fowler argues that since the initial solicitation was canceled because the low bid exceeded the Government estimate by 16 percent and, on resolicitation, the low bid exceeded the Government estimate by more than 20 percent, the Navy should have rejected the bids as unreasonable and canceled the resolicitation.

The authority vested in the contracting officer to decide whether or not to cancel an invitation and readvertise is extremely broad. Scott Graphics, Inc., et al., 54 Comp. Gen. 973 (1975), 75-1 CPD 302. The Defense Acquisition Regulations (DAR) § 2-404.1(b) (DAC 76-17 September 1, 1978), authorizes cancellation for compelling reasons, where, "all otherwise acceptable bids received are at unreasonable prices." DAR § 2-404.1 (b)(vi), supra.

This Office has stated that a determination concerning price reasonableness is a matter of administrative discretion which our Office will not question unless the determination is unreasonable or there is a showing of bad faith or fraud. Culligan Incorporated, Cincinnati, Ohio--Reconsideration, B-189307, November 7, 1977, 77-2 CPD 345.

Here, we do not believe the fact that the low bid on the resolicitation exceeded the Government estimate price by a greater percentage than the percentage by which the low bid exceeded the Government estimate in the initially cancelled solicitation necessarily indicates the resolicitation price was unreasonable.

As we noted in our original decision although the Navy's notice of cancellation indicated the basis for cancellation of the initial solicitation was that all bids were excessive when compared to the Government estimate, the actual reason for the cancellation was bidders' inability to obtain security clearances. This required revision of the IFB to remove the security clearance requirements, resulting in a downward revision in the scope of work and a cost estimate reduction from $94,490.00 for the first IFB, to $49,434.00 under the second IFB. Under these circumstances, we believe rejection of the bids on the second solicitation on the basis argued is not required where the Navy has determined the low bid reasonable as to price and the protester has not shown the administrative determination to be unreasonable.

Therefore, the protest is denied.

Milton J. Socolar

Acting Comptroller General
of the United States