



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Picker International, Inc.
File: B-232430
Date: December 12, 1988

DIGEST

Contracting officer's rejection of sole responsive bid on the basis of unreasonable price, resulting in the cancellation of the solicitation, was proper where the bid was 33 to 42 percent higher than the prices paid for the equipment under the bidder's own recent contract and market conditions were found not to justify such an increase.

DECISION

Picker International, Inc. protests the cancellation of invitation for bids (IFB) No. DLAM-120-87-B-1193, issued by the Defense Logistics Agency (DLA) for 145 mobile, battery-powered x-ray machines with rough terrain capability. The agency decision was based on its determination that the only acceptable bid received, Picker's, was unreasonably high. The protester disputes this finding and contends that the actual motivation for cancellation was improperly to increase the quantity.

We deny the protest.

The IFB solicited bids for the equipment on the basis of two types of packaging, one with provisioning and repair parts for emergency portable deployment, and one without. The only other bid received (other than Picker's) by the April 5, 1988, opening was from General Electric Medical Supply Group (GE), but GE's bid was determined nonresponsive due to several technical deficiencies. The determination that Picker's price--\$48,634 with provisioning and \$41,438 without--was unreasonable and was based primarily on a price analysis, which compared Picker's current bid prices to the prices on a 1986 contract for the same item, on which Picker and GE competed, and which was awarded to Picker. The analysis ultimately revealed a 33 to 42 percent increase in Picker's current bid price (depending on the type of packaging), while there had been no increase in the

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Producer Price Index (PPI) for diagnostic medical x-ray equipment for the same period. At the same time, the contracting officer determined that she could not rely for comparison on GE's nonresponsive bid because of the technical deficiencies; on the government's estimate for x-ray apparatus, which was significantly lower than Picker's prices, because it was based on outdated catalog information; or on commercial prices, because the item requested was military unique with the commercial item exhibiting significant differences.

Picker contends that use of its 1986 contract prices for comparison to the PPI was improper because its price there had been based on an underestimation of the manufacturing costs, leading the firm to lose money in the manufacture of the equipment at the 1986 contract price. Picker further asserts that the PPI is too general an index to gauge the reasonableness of a bid, and that the agency instead should have relied on a combination of Picker's actual cost of manufacturing the unit in 1986, GE's price in its unacceptable bid, and commercial prices for similar units. Picker maintains the agency had access to the firm's actual 1986 production costs (through already obtained data or by audit); that the agency could have used GE's nonresponsive bid (of \$47,600 with provisioning and \$38,000 without) as a basis of comparison, because the defects in the bid in fact were not material; and that its commercial prices are relevant because the military model here is only a ruggedized version of its commercial product, with more than 50 percent of the same parts. The protester speculates that the agency contrived its price unreasonableness determination to justify canceling the IFB so quantities could be increased.

Generally, cancellation of an IFB after bid opening is improper absent a cogent and compelling reason. Nevertheless, the Federal Acquisition Regulation (FAR) authorizes cancellation where "all otherwise acceptable bids received are at unreasonable prices, or only one bid is received and the contracting officer cannot determine the reasonableness of the bid price." FAR § 14.404-1(c)(6). Moreover, before awarding any contract, a contracting officer must determine that the price at which the contract would be awarded is reasonable. FAR § 14.407-2. A determination concerning price reasonableness is a matter of administrative discretion that we will not question unless the determination is unreasonable or the protester demonstrates fraud or bad faith on the agency's part.

Daniels Manufacturing Corp., B-223475.2, Jan. 13, 1987, 87-1 CPD ¶ 51; Hoboken Shipyards, Inc., B-223581 et al., Sept. 14, 1986, 86-2 CPD ¶ 324. 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, including any which have been revealed in the bidding. Id. FAR §§ 14.407-2 and 15.805-2.

Our review of the record here provides no basis to question the contracting officer's determination that the available information did not permit her to make the required finding that Picker's bid was reasonable. Although there had been no increase in the PPI, Picker's bid prices were 33 to 42 percent higher than Picker's 1986 contract prices for the same items. See Washington Patrol Service, Inc., B-225610 et al., Apr. 7, 1987, 87-1 CPD ¶ 384. While Picker contends that the PPI is not as accurate a reflection of the pricing environment as other indexes, Picker has neither identified the indexes it considers preferable, nor presented other similar evidence that market prices for this equipment have increased substantially since 1986. Moreover, we have upheld the use of the PPI as an appropriate factor in determining whether market conditions justify a price increase from previous contracts of the same requirements. See Daniels Manufacturing Corp., B-223475.2, supra.

Further, Picker has not demonstrated that the agency failed to consider other reasonably available information. Picker's claim that the agency had information that the firm had underbid the 1986 contract appears to be based on preaward letters to the agency urging a prompt award and expressing concern about the unique solicitation requirements. These letters do not explain the situation under the 1986 contract, however, and the agency has submitted affidavits from agency personnel denying they were aware Picker experienced pricing difficulties under the 1986 contract. We find no evidence that contracting officials here were on notice of any increase in production costs such that they should have known to take those costs into account in judging the reasonableness of Picker's 1988 bid prices.

We do not share Picker's view that DLA was required to audit Picker's 1986 production costs in determining reasonableness; an audit is not one of the suggested price reasonableness determination techniques specified in FAR (§ 15.805-2) and, in any case, DLA believes such an audit would have been pointless, since a recent audit of Picker's prices for repair parts kits had found that the firm maintained inadequate pricing data. In any event, even if the increased production costs that Picker now claims are

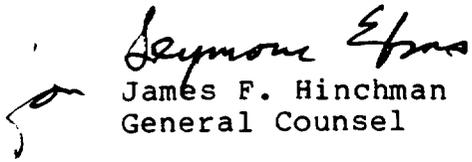
added to Picker's 1986 contract prices (as adjusted to reflect the fewer accessories required under the canceled solicitation), its 1988 bid prices are still 6 to 7.8 percent higher, an increase for which Picker provides no adequate explanation. As we have found cancellation to be justified where the low bid exceeded the government estimate by as little as 7.2 percent, see Harrison Western Corp., B-225581, May 1, 1987, 87-1 CPD ¶ 457, the contracting officer properly could have determined Picker's prices to be unreasonable even had she considered Picker's alleged higher 1986 production costs.

We also do not find that the contracting officer's refusal to consider GE's nonresponsive bid rendered the price analysis unreasonable. We have stated that comparisons with nonresponsive bids for purposes of price reasonableness determinations should be undertaken with caution, both because the nonresponsiveness may concern bid elements that affect the bid price, and because it may be difficult to tell whether the nonresponsive bidder seriously wished to have its bid accepted. MIL-STD Corp., B-212038 et al., Jan. 24, 1984, 84-1 CPD ¶ 112. Here, we are not persuaded that the technical deficiencies in GE's bid were so clearly inconsequential that the contracting officer was required to rely on GE's bid as a basis for comparison and ignore the bid prices from 1986.

We similarly do not agree that DLA failed to give proper consideration to commercial prices in the price analysis. The agency was aware of Picker's commercial model, but specifically determined that while Picker's offered MXM model and its commercial model had the same general configuration, they were in fact substantially different; among other differences, the MXM model has a heavy duty drive mechanism, larger wheels, increased battery capacity, and a motorized stand. DLA considered these differences significant enough to render the commercial model an unsuitable basis for a price comparison. Indeed, Picker itself emphasizes that the military model is subject to more stringent specifications, and explains that basing its 1986 price for the MXM on its commercial model is what led it to underbid the 1986 contract. Further, while Picker points to the fact that 50 percent of the two models' parts are the same as evidence that the models are similar, we think two models having only 50 percent of their parts in common actually suggests that the items are sufficiently dissimilar that the price of one would not necessarily indicate the reasonableness of the price of the other.

We conclude that DLA's reliance on Picker's prior contract price for the same item in finding Picker's price unreasonable was proper, and that cancellation of the solicitation due to the absence of any reasonable bids thus was unobjectionable.

The protest is denied.


James F. Hinchman
General Counsel