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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Pipe, Inc.
File: B-236461
Date: December 7, 1989

DIGEST

Contracting agency's decision to cancel invitation for bids based on unreasonableness of price of the only bid submitted was proper where the bid price exceeded the government estimate by 43 percent, and exceeded prices paid for similar services under bidder's own recent contract by an amount the agency determined was not justified by market conditions.

DECISION

Pipe, Inc., protests the cancellation of invitation for bids (IFB) No. N62470-89-B-2215, issued by the Naval Facilities Engineering Command for maintenance of railroad and ground level crane rail at the Norfolk Naval Shipyard in Virginia. The Navy's decision was based on its determination that the only bid received, Pipe's, was unreasonably high. The protester disputes this finding, and asserts that the IFB should be reinstated and a contract awarded to Pipe. In the alternative, Pipe asks that we recommend that the Navy enter into meaningful negotiations with the firm.

We deny the protest.

Pipe submitted a bid for \$807,700. Because the bid price far exceeded the government's estimate of \$592,705, the Navy reevaluated its estimate. The review resulted in a reduction in the estimate, based on a Department of Labor wage determination that had not been available at the time the initial estimate was prepared; Pipe's bid price was 43 percent higher than the revised estimate of \$563,674. At Pipe's request, the Navy met with the firm to discuss the disparity between the government estimate and the bid price, but declined the firm's request to negotiate the bid price. The agency ultimately concluded that Pipe's bid was unreasonably high and canceled the IFB on this basis, deciding that the requirement should be advertised. (A Navy survey of the firms that were solicited but did not bid

indicated that at least five of the firms would submit bids on a resolicitation.)

Pipe believes the Navy's determination was unwarranted. It explains that, as the incumbent contractor for substantially the same services for the past 2 years, it was able to use records of actual performance to price its bid, and asserts that the Navy's price reasonableness determination should have been made on this same basis. Pipe further maintains that, even if otherwise appropriate, the Navy's estimate was defective because it was distorted by undue reliance on inapplicable engineering performance standards (EPS).

The Federal Acquisition Regulation (FAR) authorizes cancellation of an IFB after bid opening 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). A determination concerning price reasonableness properly may be based on a comparison with the government estimate alone, Harrison Western Corp., B-225581, May 1, 1987, 87-1 CPD ¶ 457, and ultimately is a matter of administrative discretion that we will not question unless it clearly is unreasonable or the protester demonstrates fraud or bad faith on the part of the agency. Omni Elevator, B-233450.2, Mar. 7, 1989, 89-1 CPD ¶ 248. We generally will not question an agency estimate that is on its face reasonable, notwithstanding arguments that the estimate could have been calculated differently, particularly where the agency has taken care to recalculate the estimate in light of the wide disparity between the estimate and the submitted bid price, and where the protester fails to show that the disparity would have been overcome by the use of a different methodology in any event. See, e.g., A.T.F. Constr. Co., Inc., B-228060, B-228061, Oct. 30, 1987, 87-2 CPD ¶ 436; Harrison Western Corp., B-225581, supra.

The Navy reports that it did consider performance history in determining its estimate, but concluded that it was not an appropriate measure of reasonable pricing, since Pipe's prior contract involved less work (\$273,738 contract price) than the current IFB, included fewer total line items, and included other items under which either no work or very little work was ordered under the prior year's contract with Pipe. This being the case, with regard to much of the work, the agency had had little or no experience from Pipe's contract on which it could base an estimate or a reasonableness analysis. (In awarding the prior contract to Pipe, the Navy relied on price analysis, comparing Pipe's price to another firm's higher bid, a methodology not possible here since only one bid was received). Further, the Navy noted

that for those line items that were included in both the current and prior solicitations, Pipe's total unit prices were higher by \$13,026, an amount Pipe attributes to inflation, but that the Navy specifically found was not warranted by either inflation or market conditions.

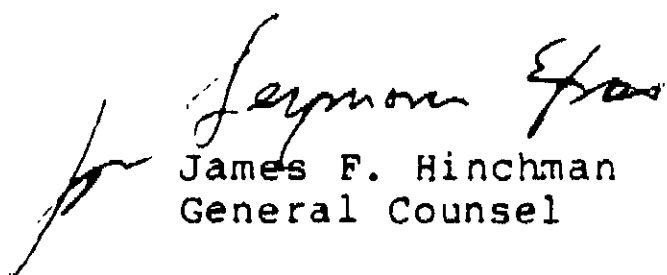
We find no basis for questioning the Navy's position. The Navy clearly considered the feasibility of relying on Pipe's performance data, and rejected that approach based on a cogent rationale. Pipe has not rebutted the Navy's statements in this regard except to suggest generally that higher prices should have been expected due to inflation. Pipe's mere reference to inflation, however, is not sufficient to overcome the Navy's rationale. Moreover, as indicated above, we have held that an agency properly may determine that a bid should be rejected as unreasonably high based solely on a comparison of the bid to a government estimate; there is no requirement that the agency instead rely on prior performance data. Harrison Western Corp., B-225581, supra.

Pipe's further argument that the Navy's estimate is defective due to the Navy's reliance on EPS is based on Pipe's assertion that the EPS are appropriate only for classic railroad trackage. As the present solicitation largely concerns a rail system that supports the movements of cranes, and is generally heavier than conventional railroad track and supported by a different kind of base, the protester concludes that the use of EPS resulted in too low an estimate of the costs involved.

There is no indication here that the Navy improperly based its estimate on EPS. The Navy states that it used the EPS only for the typical railroad trackage work involved in this contract, i.e., the work to which Pipe concedes the EPS apply, and that it used work-related experience in developing estimated costs for non-typical conditions, including the portion of the contract involving crane rails. We find no basis for questioning the agency's explanation. Moreover, as the protester has not demonstrated that the great disparity between its bid price and the government estimate would have been substantially reduced by the use of an alternative methodology, we could not conclude that Pipe was prejudiced by the manner in which the Navy computed its estimate in any event. See Harrison Western Corp., B-225581, supra (general assertions that work is complex and speculation that government estimate is too low are insufficient to overcome determination of price unreasonableness based on large discrepancy between low bid and government estimate).

The protester suggests that the agency acted in bad faith by deciding to resolicit instead of conducting negotiations with Pipe, based solely on its desire to obtain a better price by readvertising the requirement. We find this argument unpersuasive. Under FAR § 15.103, conversion from sealed bidding to negotiation under the circumstances here is permissive, not mandatory. Based on Pipe's unwillingness to lower its bid price during the meeting with the Navy, the Navy states that it had no reason to believe that negotiation would serve the government's interests in this case. This is not bad faith, and we find no reason to question the Navy's judgment. See Ford Constr. Co., Inc., 64 Comp. Gen. 810 (1985), 85-2 CPD ¶ 264; Discount Machinery and Equipment, Inc., B-231067.2, July 18, 1996, 88-2 CPD ¶ 63.

The protest is denied.


James F. Hinchman
General Counsel