DECISION

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

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FILE: B-180088 DATE: July 10, 1974

MATTER OF: Airways Rent-A-Car of Seattle
Airways Rent-A-Car of Spokane

DIGEST: Rejection of bids for car rental services in three geographical areas on basis that bids were unreasonably high, and resolicitation under authority of 41 U.S.C. 252(c)(14), did not result from abuse of discretion, since rejected bids exceeded previous year's contract prices and bids for other service areas for current year, and lower prices were obtained upon resolicitation. Negotiated award based on initial proposals without discussion was proper under FPR 1-3.805-1(a)(5).

The protesters, hereinafter referred to as Airways-Seattle and Airways-Spokane have protested the rejection of all bids under, and the cancellation of, solicitation No. 10PN-PSS-3854, issued by the General Services Administration, Federal Supply Service, Region 10, insofar as it concerns motor vehicle rental services in three designated service areas in Washington State: Seattle International Airport, Downtown Seattle, and Spokane.

The solicitation was issued August 13, 1973, contemplating a schedule-type contract for a number of service areas located in Alaska, Idaho, Montana, Oregon and Washington for the period of March 1, 1974, or date of award, if later, through February 28, 1975. The solicitation was structured upon pre-determined rate schedules for different locations by type of vehicle, and awards were to be made upon the basis of the best single discount offered for each service area for all rental periods specified. Thus, the lowest bid for a given area would constitute that bid offering the highest discount.

Upon the opening of bids on October 15, 1973, Airways-Seattle was determined to be the only eligible (small business) bidder for the Seattle International Airport and Downtown service areas. Airways-Spokane was determined to be the apparent low bidder for the Spokane service area. For each of these areas, the Airways firms had offered a 33-1/3 percent trade discount, with a prompt payment discount of 5 percent - 20 days.

In determining that the prices offered for each of these areas were excessive and would result in an unreasonable cost to the Government, the contracting officer placed considerable emphasis upon the fact that the Airways bids would result in increased costs of 39 percent, 45 percent and 33 percent over existing contract prices for the Seattle Airport, Downtown Seattle, and Spokane areas respectively. The contracting officer further determined that, on the basis of estimated volume for these areas, the additional costs would be $27,300, $2,250, and $9,900 respectively. Moreover, it was ascertained that discounts offered for all of the other service areas (excluding the three under discussion) involved costs from 17.5 percent less to only 17 percent above those of the previous contract period. Accordingly, it was determined that the discounts offered for these three areas were unreasonable, and that it would be in the best interest of the Government to reject all bids for the referenced areas and negotiate for lower prices under the authority of 41 U.S.C. 252(c)(14).

Three offers were received in response to the negotiated resolicitation. Budget Rent-A-Car submitted the lowest initial offer with a discount of 43.95 percent for each of the subject areas, which in the contracting officer's judgment represented potential savings of 12 percent over the prices offered under the advertised procurement. In the presence of three offers, and since Budget's initial offer was deemed reasonable, award of the three service areas was made to it without discussions, as permitted by the solicitation (Standard Form 33A, para. 10 (g)).

Counsel for the Airways firms objects to the determination that bids under the advertised solicitation were unreasonable, and further submits that in view of the language of Federal Procurement Regulations (FPR) 1-2.404-1(a) that the preservation of the integrity of the competitive bidding system requires an award to the low responsive, responsible bidder unless there exists a compelling reason to reject all bids, it is somewhat doubtful that such a compelling reason was evident from the circumstances.

Counsel states that the contracting officer's failure to consider certain cost elements rendered the determination arbitrary and an abuse of administrative discretion. Among these considerations were the existence of some purportedly unbalanced rental rates in the schedule which allegedly set forth rates for smaller cars on a "no-gas" basis, thereby creating a problem for bidders who were required by the

previous year, the ratio of Type I to Type II vehicles rented was approximately 40 to 60 percent. While conceding that the energy crisis may well increase the usage of Type IB cars, the contracting officer points out that at the time of issue of the solicitation (August 1973), this factor was not forseeable, and the solicitation was based on the contracting agency's best estimates of its needs at that time.

As for the alleged failure to include gasoline charges for Type I vehicles in the schedule rates, it is reported that although the schedule rates used were based on published commercial lists of one or more of the major commercial car rental agencies which normally do not include gasoline charges for Type I vehicles, a proper adjustment had been made to the solicitation schedule to include gasoline charges.

We have reviewed the record for indications of the alleged communications between the contracting agency and the successful offeror under the negotiated procurement that might indicate that the decision to cancel the solicitation was based on collusion or favoritism, rather than a good faith analysis of bid prices and costs, but we are unable to discern any evidence thereof.

It is provided in 41 U.S.C. 253(b) that all bids submitted in response to an advertised solicitation may be rejected when a determination is made that it is in the public interest to do so. Among the circumstances providing specifically for the cancellation of an invitation is a determination that all otherwise acceptable bids received are at unreasonable prices. (FPR 1-2. 404-1(b)(5)). Where such a determination of unreasonable bid prices has been made, as in the instant case, 41 U.S.C. 252(c)(14) provides the authority to negotiate for lower prices.

In reviewing determinations that prices are excessive, it is not the province of our Office to place itself in the position of the contracting officer and determine whether we would consider the same factors with the same weight, or whether we would even arrive at the same conclusion. To the contrary, there is necessarily reserved to contracting officials a substantial amount of discretion in determining whether an invitation should be canceled, and nowhere is this discretion better evidenced than in determinations as to the reasonableness of bid prices. B-164284, July 16, 1968. Accordingly, we will not question the exercise of such discretion in the absence of a clear showing of its abuse. B-167972, October 31, 1969.

With regard to the numerous inflationary factors that counsel contends the contracting officer failed to consider, we note that the determination of excessive prices for the three service areas at issue was based in part upon a comparison to the increase in cost to the Government presented by bids for other service areas under the same solicitation which, while considered reasonable, nevertheless resulted in higher costs, in varying percentages, than the previous year's contracts, thus reflecting the various inflationary considerations affecting this particular industry. Therefore, it is our conclusion that a determination that Airways bids were excessive based on comparison to those for other service areas implicitly considered these inflationary contingencies on a general basis even though not on an itemized basis as urged by counsel.

Even after accounting for the decrease of $3.00 in schedule prices for Type IB vehicles, the estimated cost increase to the Government of 20 percent was considered excessive by the contracting officer. Under similar circumstances, we have concluded that where prices originally bid averaged 19 percent higher than current contract prices, the contracting officer had an adequate basis upon which to judge them excessive. B-164284, supra. It is further noted that the offers received under the subsequent negotiated procurement presented projected savings to the Government of 12 percent over bids received under the advertised solicitation.

We believe the determination of whether the bids were unreasonably high was a difficult one, and we regard the protesters' position as having some merit, particularly in view of the rapidly-changing price and availability of fuel. Nevertheless, from our review of the record, we are unable to conclude that there has been a clear showing of abuse of the administrative discretion committed to the contracting officer.

In addition to the principal issue of the propriety of rejecting bids and resoliciting, the protesters allege that a number of procedural errors were made by the agency in its processing of the protests. Counsel contends that the agency did not comply with sections 20.4 through 20.6 of our Interim Bid Protest Procedures and Standards, 4 CFR 20.4 - 20.6, in that the agency did not provide our Office with an advance written finding specifying the factors which would not permit a delay in the award until issuance of our ruling; that the

agency did not timely submit its report on the protest; and that the agency failed to furnish a copy of its report to the protesters "concurrently" with its submission to our Office.

Our records show that on February 13, 1974, our Office was orally advised by the agency that it had determined to proceed with award on the basis of urgency, in view of the impending lapse of car rental services absent a contract therefor. Under these circumstances, the failure to provide our Office with written notice does not constitute a basis for disturbing the award. B-176692, December 27, 1973.

The procuring agency submitted its report to our Office substantially later than the 20 working days contemplated by section 20.5 of our Interim Bid Protest Procedures and Standards. Based upon our conversations with GSA officials concerning the status of their report, we believe the delay in its issuance was caused not by a desire to frustrate resolution of the protest but by careful consideration of an admittedly difficult issue. We note, for example, that additional time was consumed by the contracting officer's reconsideration of her determination in light of the reduced schedule prices for certain vehicles. We have also been advised by GSA that it is studying the method by which it procures car rental services, as a result of which changes will be made in the terms of its solicitations.

In the absence of an indication in the administrative report that a copy had been furnished the protesters' counsel, we made inquiry of the agency, and were assured that a copy was being sent. Although apparently several days elapsed before counsel received his copy, we do not regard that as a circumstance affecting the merits of the protest.

Federal Procurement Regulations 1-2.407-8(b)(4) provides that if award is made despite the pendency of a protest, the contracting officer "* * * shall give written notice of the decision to proceed with the award to the protester * * *." Protesters' counsel maintains that his receipt of a written notice after award had been made, rather than before, violated a verbal agreement with the contracting officer and did not comply with the regulation quoted above. Although we are not privy to the verbal understanding between counsel and the contracting officer, we are of the opinion that FPR 1-2.407-8 (b)(4) does not require that notice be given to the protester in advance of an award. See 51 Comp. Gen. 787, 791 (1972).

Finally, protesters' counsel argues that the contracting officer failed to conduct meaningful price negotiations upon resolicitation.

Under FPR 1-3.805-1(a)(5), the contracting officer has authority to make an award on the basis of initial proposals received without further discussion where it can be shown from the existence of adequate competition or accurate prior cost experience that acceptance of the most favorable initial proposal without discussion would result in fair and reasonable prices, provided the request for proposals notifies all offerors of this possibility. As indicated, the RFP advised offerors that award might be made on the basis of initial proposals and since the other required elementswere found to exist, we find no basis to object to the award for failure to conduct negotiations with the offerors.

In view of the foregoing, the protests are denied.

R. F. Keller

Deputy Comptroller General
of the United States