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Decision

Matter of: The Regal Press, Inc.

File: B-420831

Date: September 16, 2022

Anthony W. Hawks, Esq., Anthony W. Hawks Law Office, for the protester.
James Goodman, III, Esq., Government Publishing Office, for the agency.
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DIGEST

Protest challenging the agency's cancellation of invitation for bids after bid opening was unobjectionable where the agency found the protester's bid price to be unreasonable based on a comparison of adjusted historical pricing.

DECISION

The Regal Press, Inc., of Norwood, Massachusetts, protests the cancellation of invitation for bids (IFB) No. Program-118-S, issued by the Government Publishing Office (GPO) for the production of Army certificates and dies. Regal alleges the agency's decision to cancel the IFB was improper because it was based on a flawed evaluation of prices, leading the agency to erroneously find the protester's price to be unreasonably high.

We deny the protest.

BACKGROUND

The IFB, issued on May 20, 2022, anticipated a single award of a contract for one base year and two 1-year option periods. See Agency Report (AR), Exh. A, IFB at 1; AR, Exh. G, Resolicitation Notice. The procurement was for the manufacturing of dies and the production of printed, stamped, or embossed certificates, requisitioned by the Department of the Army. IFB at 7. Award would be made to the lowest responsive bid. *Id.* at 17.

The deadline for submission of bids was May 27, 2022. IFB at 1. GPO received two timely and responsive bids, including one from the protester. Regal's price at bid

opening was \$909,047.71, which was the second lowest price offered. Supp. Memorandum of Law (MOL), attach. 1, May 27 Bid Abstract at 1. After GPO emailed the lowest bidder to confirm bid prices, that bidder informed GPO there was a clerical error in its bid. AR, Exh. D, Mistake in Bid Email at 1-2. As such, on June 10, GPO granted permission for that bidder to withdraw its bid from competition, leaving only Regal's bid remaining. AR, Exh. E, Notification of Bid Withdrawal at 1.

Ultimately, GPO canceled the IFB, finding that the one remaining bid's (Regal's) price was unreasonably high. AR, Exh. F, Notice of Unsuccessful Bid. To evaluate the reasonableness of Regal's price, the agency used, for comparison, historical pricing from a 2020 GPO contract for the same requirement. See AR, Exh. P, 2020 IFB. The contracting officer found that, even after adjusting the prices upwards of 50 percent to account for market price increases, the protester's bid was still over 80 percent higher than the adjusted historical price. *Id.* On June 10, GPO notified Regal that the IFB was canceled after bid opening because Regal's bid price was unreasonable. Notice of Unsuccessful Bid at 1. The requirement (Program-118-S) was then resolicited, with the next bid opening occurring on June 16.¹ *Id.* Regal submitted its timely protest with our forum on June 21.²

DISCUSSION

Regal essentially alleges that the agency's decision to cancel the IFB after bid opening was improper because the decision was based on a flawed evaluation of the reasonableness of Regal's submitted bid price. When using historical price information to evaluate its price for reasonableness, the protester contends that GPO did not adequately adjust the historical price to account for differing market and economic factors. Protest at 5-8. Notably, Regal argues that the 2020 contract that the agency used for the historical price comparison was awarded at the beginning of the COVID-19 pandemic, and that in the two years since that award, costs have risen for the production of paper stock and fuel. *Id.* at 7. Additionally, the protester states that inflation has risen significantly over the past two years. *Id.* at 7-8. Therefore, according to the protester, in determining whether Regal's 2022 bid price was reasonable, the

¹ Regal submitted a bid for the June 16 opening. Contracting Officer's Statement (COS) at 2. Regal's bid was not selected for award because Regal did not submit the lowest-priced bid. AR, Exh. J, June 16 Bid Abstract at 1. Performance has since begun on this contract, with GPO informing our Office on June 30, 2022, that the agency authorized an override of the stay of performance required by the Printing Procurement Regulation. Notice of Stay Override at 1; see Ch. XV, § 2.5(c)(2).

² When the last day of the 10-day period is a Saturday, Sunday, or Federal holiday, the period by which the protester must submit its protest extends to the next day that is not a Saturday, Sunday, or Federal holiday. 4 C.F.R. § 21.0(d). Here, the last day of the period would fall on Monday, June 20, 2022, which was an observed federal holiday. Thus, the period extended to Tuesday, June 21.

agency was required to account for those market and economic variables when comparing Regal's 2022 bid price to the 2020 contract price. Comments at 4.

The agency responds that GPO's decision to cancel the IFB after bid opening was reasonable because the protester's bid price was "excessive." MOL at 2. The agency explains that the contracting officer did make adjustments to the historical contract price in determining the reasonableness of bid prices. Supp. MOL at 1-3. The contracting officer found that, even after adjusting the 2020 contract price to account for the increased price of paper stock, the protester's price was still 83 percent higher than that of the adjusted historical price. *Id.* We have considered all protest grounds and find no basis upon which to sustain the protest.

As an initial matter, we note that GPO procurements are governed by GPO's Printing Procurement Regulation (PPR), rather than the Federal Acquisition Regulation (FAR).³ The procedures governing this GPO procurement, though not identical, are similar to the procedures for invitation for bids found under FAR part 14. Under the PPR, once bids have been opened, award must be made to the responsible bidder that submitted the lowest responsive bid, unless there is a compelling reason to reject all bids and cancel the IFB.⁴ PPR, Ch. XII, § 2.1(a); *C-Cubed Corp.*, B-289867, Apr. 26, 2002, 2002 CPD ¶ 72 at 3. The PPR provides several examples of circumstances "which may justify cancellation of an IFB after opening." PPR, Ch. XII, § 2.1(b). Relevant here, the PPR (as well as the FAR) identifies that an IFB may be canceled after bid opening if all otherwise acceptable bids are received at unreasonable prices. PPR, Ch. XII, § 2.1(b)(5); see FAR 14.404-1(c)(6).

Although the PPR does not address how the reasonableness of bid prices should be determined, section 14.408-2 of the FAR provides the following guidance with regards to assessing prices under an IFB: "The contracting officer shall determine that . . . the prices offered are reasonable before awarding the contract. The price analysis techniques in [FAR] 15.404-1(b) may be used as guidelines." FAR 14.408-2(a). Though not binding on GPO, we have looked to the FAR for guidance in protests involving GPO, especially where the PPR is silent. *City Wide Press, Inc.*, B-231469, Aug 10, 1988, 88-2 CPD ¶ 127 at 2-3; *cf. Custom Printing Co.*, B-230002, Mar. 29, 1988, 88-1 CPD ¶ 318. In this regard, our prior decisions have stated that a determination of price reasonableness is within the discretion of the contracting agency and will not be disturbed unless the determination is unsupported or there is a showing of fraud or bad faith on the part of the contracting officials. *Rolette Meats & Distrib., Inc.*, B-234383, June 5, 1989, 89-1 CPD ¶ 525 at 3-4. Moreover, our Office has found

³ GPO's PPR is available online at: <https://www.gpo.gov/docs/default-source/forms-standards-pdf-files/ppr.pdf>.

⁴ This PPR provision corresponds to section 14.404-1 of the FAR, to which GPO, as an agency of the legislative branch, is not subject. *News Printing, Inc.*, B-274773.2, Feb. 11, 1997, 97-1 CPD ¶ 68 at 2; compare FAR 14.404-1(a)(1), with PPR, Ch. XII, § 2.1(a).

that, in the context of an IFB, a determination that a bid is unreasonably high may properly be based on comparisons with government estimates, past procurement history, current market conditions, or any other relevant factors. *Cottrell Eng'g Corp.*, B-242973, May 21, 1991, 91-1 CPD ¶ 498 at 3.

In this instance, the agency considered the prices bid in the context of past procurement history, *i.e.*, historical prices paid. Specifically, the agency used, for comparison, historical pricing from a 2020 GPO contract for the same requirement. See AR, Exh. P, 2020 IFB. *Id.* The 2020 contract was awarded for \$391,556.29. Supp. MOL at 2; Supp. MOL, attach. 1, May 27 Bid Abstract at 1. Regal's 2022 bid price of \$909,047.71 was 133 percent higher than the 2020 contract price. COS at 2; see May 27 Bid Abstract at 1. In determining the reasonableness of the lone responsive bidder's (Regal's) price, the contracting officer provided the following explanation of how the agency performed the analysis of Regal's bid price:⁵

At the time of the evaluation of the Program 118-S bids, due to the Covid-19 pandemic, contract bid prices for paper stock were showing an average increase of approximately 40 to 50 percent over a 12 to 18-month period. As a result of the increase in market prices for paper stock, I factored a 40 to 50 percent increase from the previous award price on the 2020 Program 118-S contract. This meant that when evaluating the 5/27 submitted bids, I anticipated all viable bids to contain stock price increases up to 50 percent higher than previous contracts; which would then increase the overall contract price anywhere from 30 to 50 percent based on the total requirement(s).

Supp. MOL, attach. 2, Contracting Officer Declaration at 1.

The contracting officer found that even with the agency adjusting the 2020 contract price to account for changing market conditions, the protester's 2022 bid was still 83 percent higher than this adjusted amount.⁶ *Id.* Because GPO adjusted the historical

⁵ Although not binding on this procurement, we note that when using a historical prices paid method to determine whether prices for an established procurement are reasonable, the FAR instructs agencies to consider whether the prior price has been adjusted to account for differing market and economic factors. See FAR 15.404-1(b)(2)(ii)(B).

⁶ Because of the lack of contemporaneous documentation in the record, the protester questions whether the agency adjusted the price of the 2020 contract to account for market and other economic factors as the contracting officer described. Supp. Comments at 2. While we accord greater weight to contemporaneous source selection materials than documents prepared in response to a protest, we consider the entire record, including statements and arguments made in response to a protest, in reviewing an agency's evaluation and source selection. See *Solid Waste Integrated Sys. Corp.*, B-258544, Jan. 17, 1995, 95-1 CPD ¶ 23 at 5-6 n.4. In instances such as here, we will

pricing to account for differing market conditions, we do not find it objectionable that the agency determined Regal's bid to be unreasonable (*i.e.*, "excessive") and canceled the IFB for that reason. Notice of Unsuccessful Bid at 1.

Regal also contends that GPO should have accounted for other factors in adjusting the historical price, such as overall inflation and changes to delivery costs. Protest at 7; Supp. Comments at 2. The protester, however, references no law or regulation that mandates GPO consider any specific factors in making its price reasonableness determination, nor do we find the PPR--or the FAR for that matter--requires GPO to consider specific factors in making its price assessment. See, *e.g.*, PPR, Ch. XII, § 2.1(b)(5) (indicating, without further detail, that an IFB may be canceled after bid opening if prices are "unreasonable"); FAR 14.408-2(a) (stating FAR 15 price analysis techniques "may" be used as "guidelines" to assess price reasonableness). Therefore, we find no basis to sustain the challenge to the agency's price analysis merely because the agency did not consider the specific factors advocated by the protester in assessing the reasonableness of bid prices.⁷

consider post-protest explanations that provide a rationale for contemporaneous conclusions, so long as those explanations are credible and consistent with the contemporaneous record. See *Professional Landscape Mgmt. Servs., Inc.*, B-286612, Dec. 22, 2000, 2000 CPD ¶ 212 at 4.

⁷ The protester also claims that GPO improperly failed to refer the cancellation of the IFB after bid opening to the Contract Review Board (CRB), as is required by the PPR. Supp. Comments at 2 n.2; see PPR, Ch. I, § 10.4(a)(2). The agency contends that the protester fails to recognize that the PPR provision also stipulates that, "[a] solicitation may be resolicited without CRB review when no bids or proposals have been received at time of opening or closing or when all bids under an invitation for bids (IFB) are nonresponsive." PPR, Ch. I, § 10.4(a)(2); see Second Supp. MOL at 1. According to agency counsel, GPO was not required to refer its decision to cancel the IFB to the CRB because the protester's bid "was unreasonable, and therefore nonresponsive to the IFB." Second Supp. MOL at 1. We disagree. We find that there is nothing in the record, nor can the agency cite to any documentation, that supports the assertion that Regal's bid was nonresponsive--a finding corroborated by the contracting officer, when the contracting officer acknowledged that "GPO received two (2) responsive bids: 1) The Regal Press, Inc. . . . and 2) [the other bidder]." COS at 1. Because Regal submitted a responsive bid, the PPR required the cancellation of the IFB (after bid opening) to be referred to CRB for review. PPR, Ch. I, § 10.4(a)(2).

While we agree with the protester that the agency was required to refer the cancellation of the IFB to the CRB for review, we find the agency's failure to do so here was a procedural deficiency that GAO will not review. Cf. *K2 Solutions, Inc.*, B-417689, Sept. 24, 2019, 2019 CPD ¶ 330 at 8-9 (finding that the agency's failure to issue a pre-award notice to the protester, which would have allowed unsuccessful offerors the opportunity to have the Small Business Administration review the prospective awardee's size status, was a procedural deficiency that GAO would not review, absent a finding of

Lastly, the protester expresses its dissatisfaction with its price being disclosed after bid opening. Regal notes that because the other bidder withdrew its bid due to a mistake after the May 27 bid opening, only the protester's price was disclosed to the public. Comments at 2. To the extent Regal argues that the agency acted improperly by disclosing its bid as part of the bid opening process, we find no merit to this argument.

Here, the contracting officer was required to publicly open bids received in response to the IFB. PPR, Ch. X, § 4.3(a). Once opened, interested parties are permitted to examine the bids submitted. *Id.* The contracting officer clearly acted properly at the bid opening. Further, as discussed above, the agency's decision to cancel the IFB after bid opening was unobjectionable. While it is possible that other bidders could have considered Regal's price under the original solicitation in preparing their bids for the June 16 opening, the protester has failed to identify what, if any, procurement law or regulation was violated by the agency's actions. Additionally, although any resolicitation after rejection of unreasonably priced bids allows firms to bid with knowledge of the prior bid prices, the second competition also gives bidders that submitted unreasonable prices, like Regal, another opportunity to bid at a reasonable price. *See Groathouse Constr.*, B-235250, B-235236, July 13, 1989, 89-2 CPD ¶ 44 at 5; *see also* Notice of Unsuccessful Bid at 1. Accordingly, because we find GPO's cancellation of the IFB after bid opening to be reasonable, we find nothing improper in the agency's public opening of Regal's bid or the subsequent resolicitation of the requirement. *Groathouse Constr.*, *supra*.

The protest is denied.

Edda Emmanuelli Perez
General Counsel

competitive prejudice). According to the PPR, upon the contracting officer referral of the decision to cancel the solicitation to the CRB, the CRB members convene to determine whether they concur with the contracting officer's assessment. PPR, Ch. I, § 10.3(b). However, even if the CRB disapproves of cancellation, the contracting officer is still able to cancel and resolicit the IFB, so long as the contracting officer "promptly inform[s] the [CRB] of the proposed action and the reasons therefor." PPR, Ch. I, § 10.3(c). The protester has not shown that even if the agency had provided the required referral, that referral would have had any bearing on the agency's ability to cancel the solicitation after bid opening. Here, we do not find that GPO's failure to refer the matter to the CRB competitively prejudiced the protester. *See K2 Solutions, Inc.*, *supra*. Accordingly, we find no basis to sustain the protest on this ground.