



Comptroller General
of the United States
Washington, D.C. 20548

23345

Decision

Matter of: Tucson Iron & Metal
File: B-259689
Date: April 25, 1995

Gary Kippur for the protester,
Cynthia Emerson, Esq., and Angella Battle, Defense Logistics
Agency, for the agency.
Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Agency has a compelling reason to reject all bids and cancel a solicitation for the sale of scrap aluminum where a price analysis comparing the high bid price and recent contract prices with the respective prevailing market prices for scrap aluminum supports agency's determination that the government should get a higher price for the scrap than reflected in the bids received.

DECISION

Tucson Iron & Metal protests the cancellation of invitation for bids (IFB) No. 31-5631 issued by the Department of Defense, Defense Reutilization and Marketing Service, for the sale of scrap irony aluminum from 10 demilitarized B-52 aircraft.

We deny the protest.

The IFB incorporated by reference the instructions, terms, and conditions in the agency's "Sale by Reference" pamphlet which states in pertinent part, "[t]he [g]overnment reserves the right to reject any or all bids . . . as may be in the best interest of the [g]overnment."

The lot of scrap metal covered by this IFB was the subject of a previous contract with another firm which was terminated for convenience of the government. The prior contractor had performed some scrapping services under the contract prior to termination.

The agency received four bids by bid opening on December 2, 1994. Tucson bid the highest unit price of \$0.3217 per pound. The sales contracting officer determined that Tucson's bid price was only 59.5 percent of the prevailing market price for scrap aluminum (\$0.54 per pound) as of the date of bid opening.¹ She compared this percentage with the similar percentages of prior prevailing market prices that existed with regard to prices on similar contracts awarded over the preceding 6 months, which ranged from a low of 65 percent up to 77 percent of market value. In addition to finding that Tucson's price represented a lower percentage of market price than any scrap metal awards over the prior 6 months, the sales contracting officer also considered that some work had already been done to this lot by the prior contractor thus rendering this scrap metal more valuable. She concluded that the government should receive a higher price for the scrap than Tucson's bid price.²

Based on the sales contracting officer's findings, the agency determined that rejection of all bids was in the best interest of the government. On December 12, the agency rejected all bids and canceled the IFB. This protest followed. Tucson alleges that the agency's basis for canceling the IFB was not compelling.

An agency must have a compelling reason to cancel a solicitation for the sale of property after bid opening. 49 Comp. Gen. 244 (1969); Sierra Forest Prods., B-245393, Jan. 2, 1992, 92-1 CPD ¶ 4. A compelling reason exists where the rejection of all bids is in the public interest. See 40 U.S.C. § 484(e)(3)(C) (1988); Marine Power & Equip. Co., Inc., B-189693, Jan. 17, 1978, 78-1 CPD ¶ 36. Rejection of all bids is in the public interest where the agency determines that no bid received constitutes a reasonable price. Metalsco, Inc., B-201130, Dec. 30, 1980, 80-2 CPD ¶ 450; Philipp Bros., Div. of Engelhard Minerals & Chemicals Corp., B-197060, June 12, 1980, 80-1 CPD ¶ 412; Marine Power & Equip. Co., Inc., supra. Contracting officials have broad discretion in determining whether bid

¹The prevailing market prices for scrap aluminum were obtained from American Metal Market, a standard industry publication.

²In addition, the sales contracting officer considered the ongoing negotiations with the previous contractor over termination costs. The agency had not finished evaluating the settlement proposal submitted by the terminated contractor and the sales contracting officer determined that the scrap should be retained by the government to corroborate that contractor's alleged costs.

prices are reasonable and, absent a clear abuse of discretion, our Office will not disturb such a determination. Id.

Here, the sales contracting officer analyzed bid prices by comparing the highest prices received here and under recent solicitations with the respective prevailing market prices for scrap aluminum. She found that the high price bid under this IFB represented a lower percentage of current market value than any the agency had recently received, and determined that the government should receive a higher percentage of the current market value to be able to say that a reasonable price was obtained. Based on this analysis, the rejection of all bids for lack of a reasonable price was in the public interest and represented a compelling reason to cancel this IFB. See id.

Tucson alleges that the agency should have used the market price for ingot aluminum in its price analysis instead of the market price for scrap aluminum. Although the price of ingot aluminum may be of importance to Tucson due to its processing of scrap when obtained, the market price of scrap aluminum is most relevant here because this IFB concerned the sale of scrap aluminum, not ingot aluminum. In any event, the agency provided unrefuted evidence showing that the market prices for scrap and ingot aluminum fluctuate in proportion to each other; thus, consistent use of either market price classification would support the agency's price reasonableness determination that was based on a relative percentage of prevailing market value.³

The protest is denied.

\s\ Ronald Berger
for Robert P. Murphy
General Counsel

³Tucson also alleges that the scrapping services already performed on the scrap aluminum did not increase the value of the scrap. The record shows that the scrap in question was altered to some extent. Regardless of the value of these alterations, the agency can reasonably find that it expects a higher price for scrap aluminum than was bid.