

DECISION



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

61349

FILE: B-185864

DATE: August 17, 1976

98676

MATTER OF: Scott Glass, Inc. - Reconsideration

DIGEST:

1. Absent authority to support recovery of "negotiated damages," unsuccessful bidder's only remedy is claim for bid preparation costs.
2. In view of limited purpose of "estimated cost range" and responsibility of bidders to determine own bid prices, GSA was not required to accept bid within "estimated cost range" when bid was determined to be excessive compared to subsequent Government cost estimate and other bid received.
3. Small business bidder was not prejudiced by omission in advertisement that solicitation was set aside for small business, since IFB indicated that procurement was restricted and bidder submitted timely bid.
4. Although IFB duplicated requirement in existing contract, IFB was not misleading in indicating that GSA intended to obtain windows by separate procurement, since duplication was eliminated when windows were deleted from existing contract.
5. Assuming that preinvitation notices had been sent primarily to large businesses as contended by small business bidder, it has not shown any prejudice as it was able to submit a bid.
6. Under Bid Protest Procedures, successful bidder under resolicitation which protester contended should not have been issued was entitled to receive copies of protest documents and question of whether bidder requested copies is irrelevant.
7. Cancellation of small business set-aside and resolicitation under unrestricted IFB is proper where bids are unreasonable in price.

Scott Glass, Inc. (Scott), has requested reconsideration of our decision of May 24, 1976, which upheld the cancellation of invitation for bids (IFB) No. GS-06B-13638 issued by the General Services Administration (GSA).

We interpreted Scott's letter of February 17, 1976, as protesting cancellation of the IFB and rejection of its bid as being excessive in price, and also seeking bid preparation costs. The letter reads in pertinent part:

"Request ruling by Comptroller General [:]

- (A) Stop bid procedures on bid solicitation
#GS - 06B - 1329 opening date March 2, 1976.
- (B) Award of contract to Scott Glass Inc. based on legal bid within guidelines as established by GSA on 11/12/75 and not amended on cost range or errors.
- (C) Re-imbusement of expenses caused by GSA involving expenses, time, costs and legal expenses."

Accordingly, our decision of May 24 reviewed the rejection of Scott's bid for being excessive in price. The record indicated that Scott's bid was \$159,562 and the only other bid received was for \$60,167. The Government's cost estimate was \$72,220. Due to the great disparity between the Government's cost estimate and the other bid (although nonresponsive), we could not find any abuse of discretion by the contracting officer in canceling the solicitation. Therefore, Scott's request for bid preparation costs was denied.

In filing comments on the agency report, Scott took exception to the sending of its protest documents to other individuals or corporations. The exact language Scott used in this matter is as follows:

"We also take exception to the sending of copies of our reports to other individuals or corporations. If GSA has the desire to send copies of their reports to Harding Glass Industries that is their business, however, we question the practice of sending our letters and documents without our specific permission. We understood that our correspondence was limited to the people

associated in U. S. Government and interested in our complaints such as our legislative delegation and GAO."

In the decision of May 24, we indicated that the Bid Protest Procedures of our Office provide for the furnishing of protest information to interested parties to allow an opportunity for them to present their arguments so as to insure basic fairness.

In requesting reconsideration, Scott states "* * * that we did not object having the bid rejected on price, nor did we ask for bid preparation costs, and in no way did we consider that the government did not have the right to issue information on request to parties that have an interest." While Scott contends that it did not ask for bid preparation costs, it requested "* * * that the contract should be awarded to Scott Glass Inc. or in lieu of same, negotiated damages."

We are cited no authorities, nor have we found any, which would support recovery of "negotiated damages" under the facts presented. An unsuccessful bidder's only remedy is a claim for bid preparation costs. Keco Industries, Inc. v. United States, 1233, 1240 (Ct. Cl. 1970); See Ionics, Inc., 53 Comp. Gen. 909, 917 (1974), 74-1 CPD 302. Our previous decision in this case indicated that allowance of a claim for bid preparation costs would not be appropriate in view of the finding that the contracting officer's actions in canceling the IFB were proper.

Scott's request for reconsideration is based on the following:

1. GSA supplied misleading "estimated cost ranges" in advertisements and the IFB.
2. Notice that the procurement was set aside for small business was omitted in advertisements.
3. The IFB duplicated a contract previously awarded for the same windows.
4. Even though the procurement was set aside for small business, the preinvitation notices mailed to 96 companies by GSA were sent primarily to large businesses.

The purpose of supplying bidders an "estimated cost range" prior to bidding is to disclose information concerning the relative magnitude of construction projects. FPR § 1-18.109 (1964 ed. amend. 95). However, bid prices are not limited to the confines of the "estimated cost range" set forth in the IFB. A bidder is still responsible for preparing its own independent bid. The IFB in question provided an "estimated cost range" of \$100,000 to \$500,000 which was based upon a budget allocation of \$104,640. An independent Government cost estimate of \$72,220 was prepared on December 11, 1975, by GSA's construction manager. GSA did not amend the "estimated cost range" as the detailed cost estimate was not available prior to the bid opening date. In view of the limited purpose of the "estimated cost range" and the responsibility of bidders to determine their own bid prices, we are unable to conclude that GSA was required to accept the Scott bid when it was determined to be excessive compared to the Government cost estimate and the other bid received.

GSA did omit in the advertisements that the solicitation was set aside for small business. However, the invitation for bids, Standard Form 20, clearly indicated that the procurement was restricted to small business. In this regard, Scott, a small business concern, was not prejudiced, since it did submit a timely bid.

We have been informally advised by GSA that certain windows at the plaza level of the project had been awarded to the prime contractor (B. B. Anderson Construction Company) due to the "fast track" method of design and package procurement. Subsequently, however, the project architect requested that all windows at the plaza level exposed to the immediate public view be procured from one contractor to assure uniformity of the member profiles and the bronze anodized finish. Although a duplication resulted from this request, it was eliminated when the windows were deleted from the B. B. Anderson contract. Thus, the IFB was not misleading in indicating that GSA intended to obtain the windows by a separate procurement.

The record indicates that GSA sent out preinvitation notices to 96 firms. Seven invitations were issued with only two companies submitting bids (Scott and Wilson Glass). Scott contends that the mailing list is primarily large industrial concerns. In this regard, the protester has not shown any prejudice--assuming that the notices had been sent to large businesses--as Scott was able to submit a bid.

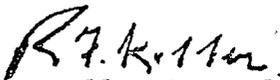
As Scott's protest relates to the sending of the protest documents to other individuals, Scott contends that this was not an issue except to GSA. Scott states "*** We have no objections of disclosure of our documents on this matter [by GAO], however, the question is raised did Harding Glass request copies. ***" Harding Glass was the successful bidder under the resolicitation which Scott contended should not have been issued. Section 20.3(a) of our Bid Protest Procedures (4 C.F.R. part 20 (1976)) provides:

"The General Accounting Office shall notify the contracting agency by telephone and in writing within one day of the receipt of a protest, requesting the agency to give notice of the protest to the contractor if award has been made or, if no award has been made, to all bidders or proposers who appear to have a substantial and reasonable prospect of receiving an award if the protest is denied. The agency shall be requested to furnish in accordance with applicable procurement regulations copies of the protest documents to such parties with instructions to communicate further directly with the General Accounting Office." (Emphasis added.)

Accordingly, under our Bid Protest Procedures Harding Glass was entitled to receive copies of the protest documents. Therefore, the question whether Harding Glass requested the copies is irrelevant.

Finally, Scott complains of discrimination by GSA toward small business. The basis for this allegation is that the resolicitation was not set aside for small business as the first one had been. However, the Federal Procurement Regulations (FPR) recognize that a set-aside may be withdrawn by the contracting officer when he determines the award not to be in the public interest, e.g., because of unreasonable price. FPR § 1-1.706-3(b) (1964 ed. amend. 101).

For the reasons stated above, the decision of May 24, 1976, is affirmed.


Deputy Comptroller General
of the United States