

DECISION



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

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FILE: B-185864

DATE: May 24, 1976

MATTER OF: Scott Glass, Inc.

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DIGEST:

1. Determination by contracting officer to cancel solicitation and readvertise because only responsive bid was found to be unreasonable as to price is not an abuse of discretion where bid in question is 165 percent higher than low (nonresponsive) bid and 121 percent higher than contracting agency cost estimate.
2. Request for bid preparation costs incurred must be denied, since action of contracting officer in canceling IFB, because only responsive bid was unreasonable as to price, was justified in circumstances.
3. As outlined in section 20.3(b) and (d) of Bid Protest Procedures (40 Fed. Reg. 17979 (1975)), material submitted in regard to protest will be provided to all interested parties unless withholding of information is permitted or required by law or regulation.

On November 12, 1975, the General Services Administration (GSA) issued invitation for bids (IFB) No. GS-06B-13638, a small business set-aside for the construction of store fronts and entrances at the Federal Building, United States Courthouse and Parking Facility in Topeka, Kansas.

GSA sent preinvitation notices to 96 companies. Seven invitations were issued with only two firms submitting bids. The following bids were opened on December 11, 1975:

Scott Glass, Inc. (Scott)	\$159,562
Wilson Glass Co., Inc. (Wilson)	60,167

The apparent low bidder, Wilson, was determined to be nonresponsive for failure to acknowledge receipt of an amendment and to submit the "home-town plan" (an affirmative action plan) bid appendix required by the IFB. On January 14, 1976, GSA advised Scott that its bid was rejected based upon the contracting officer's finding that the price was unreasonable. The contracting officer decided to cancel the IFB and readvertise, since all bids had been rejected. Scott filed a protest by registered mail with this Office on February 5, 1976.

Scott protests the rejection of its bid as being excessive in cost and contends that it is entitled to award under the initial IFB. Further, Scott seeks reimbursement of "expenses caused by GSA involving expenses, time, costs and legal expenses." In this regard, Scott maintains that its bid price was in the low range of the cost estimates provided by GSA in the IFB and that the cost range was revised by GSA the day of bid opening without informing all bidders.

The Federal Procurement Regulations (FPR) § 1-2.404-1(a) (1964 ed. circ. 1), provides, in substance, that after bids have been opened award must be made to the lowest responsive, responsible bidder unless there is a compelling reason to reject all bids and readvertise. However, under FPR § 1-2.404-1(b) (1964 ed. amend. 121), the invitation may be canceled after opening if the prices on all otherwise acceptable bids are unreasonable. The section, in pertinent part, states:

"(b) Invitations for bids may be cancelled after opening but prior to award, and all bids rejected, where such action is consistent with § 1-2.404-1(a) and the contracting officer determines in writing that cancellation is in the best interest of the Government for reasons such as the following: * * *

"(5) All otherwise acceptable bids received are at unreasonable prices. * * *" (Emphasis added.)

Further, FPR § 1-2.404-2 (1964 ed. amend. 121), entitled "Rejection of individual bids," provides in subsection (c) that any bid may be rejected if the contracting officer determines in writing that the bid price is unreasonable.

B-185864

The Government's cost estimate was \$72,220. Scott's bid was 165 percent higher than the low bid of Wilson and 121 percent higher than the Government estimate. Even though the bid submitted by Wilson was found to be nonresponsive, we have recognized that the bid of a nonresponsive bidder may be relevant to the determination of what is a reasonable price. Support Contractors, Inc., B-181607, March 18, 1975, 75-1 CPD 160. We are unable to find any abuse of discretion by the contracting officer in canceling the solicitation where the only responsive bid contained a price which was excessive when compared to the Government estimate and the only other bid submitted.

The allegation by Scott that its "bid price was in the low range of the cost estimates provided by GSA" is irrelevant. GSA in its report to our Office stated that the "estimated cost range" of the project was listed in the IFB as \$100,000 to \$500,000. The "estimated cost range," which was based on the budget allocation of \$104,640, was included in the IFB for the purpose of apprising potential bidders of the relative magnitude of the work. FPR § 1-18.109 (1964 ed. amend. 95). The latter section provides that in no event shall the statement of the magnitude of the work disclose the Government estimate. A detailed cost estimate based upon the complete design of the subject bid package was prepared on December 11, 1975 (bid opening date). The contracting officer relied upon this estimate in determining the reasonableness of Scott's bid. The validity of that determination may be substantiated by the amount of the bids received under the resolicitation. Although the new procurement was not restricted to small business concerns, the three bids received were \$44,750, \$47,871 and \$64,269.

As the request of Scott for bid preparation costs may relate to expenses incurred in pursuing a protest, it is clear that such costs are noncompensable. Descomp, Inc. v. Sampson, 377 F. Supp. 254 (D. Del. 1974); T&H Company, 54 Comp. Gen. 1021 (1975), 75-1 CPD 345. The ultimate standard for recovery of bid preparation cost, as stated in T&H Company, supra, is whether the procuring agency's actions were arbitrary and capricious toward the bidder-claimant. Keco Industries, Inc. v. United States, 492 F.2d 1200 (Ct. Cl. 1974). See The McCarty Corporation v. United States, 499 F.2d 633 (Ct. Cl.

B-185864

1974). In view of our finding above that the actions of the contracting officer in canceling the IFB were justified, Scott's request to be recompensed for costs incurred in submitting its bid must be denied.

Lastly, Scott takes exception to the sending of its protest documents to other individuals or corporations. Section 20.3(b) of our Bid Protest Procedures (40 Fed. Reg. 17979 (1975)) provides:

"Material submitted by a protester will not be withheld from any interested party outside the Government or from any Government agency which may be involved in the protest except to the extent that the withholding of information is permitted or required by law or regulation. If the protester considers that the protest contains material which should be withheld, a statement advising of this fact must be affixed to the front page of the protest document and the allegedly proprietary information must be so identified wherever it appears."
(Emphasis added.)

Similar provisions for the documents of the interested parties are found in section 20.3(d). The principle underlying our Bid Protest Procedures is to provide all parties interested in the award selection in question an opportunity to present their arguments so as to insure basic fairness. Scott did not indicate that any of its documents contained proprietary information. Further, an examination of Scott's protest documents leads us to the conclusion that they are not of such a nature for which withholding could be permitted or required by law.

Deputy

VBMK-1142
Comptroller General
of the United States