

DECISION



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

*Transf*  
10,401

FILE: B-193277

DATE: June 7, 1979

MATTER OF: Airwest Helicopters, Inc.

*[Protest Alleging Awardee's Bid was Late and Nonresponsive]*  
DIGEST:

1. Where only evidence of timely submission of bid is conflicting statements from protester and contracting agency, protester has not met burden of affirmatively proving its case.
2. Omission of bidder's name and address from bid form may be waived as minor informality, since bid form contained name and signature of president of firm and its corporate identification number for Federal tax purposes, and contracting officer's conclusion that evidence was sufficient to indicate bidder's intent to be bound was reasonable.
3. Failure of low bidder to submit with bid required list of equipment that it would use in performing helicopter seeding service did not render bid nonresponsive since list related to responsibility of bidder and therefore could be submitted after bid opening.
4. Failure to notify GAO of intention to award contract prior to resolution of protest is procedural deficiency that does not affect validity of award.
5. Costs of pursuing bid protest are not compensable. In addition, claim for bid preparation costs is denied where there has been no showing that contracting agency deprived protester of award to which it was otherwise entitled.

*005520*

DLG-01753

DLG 01754

Airwest Helicopters, Inc. (Airwest), protests the award of a contract by the Department of Agriculture to High Country Helicopters (HCH), the low bidder under invitation for bids (IFB) No. SCS-33-C0-78. The solicitation, issued on October 13, 1978, was for the helicopter seeding of approximately 3,000 acres of forest burn area in Colorado. Airwest, the second low bidder, alleges that HCH's bid was accepted after the time for bid opening; that the bid was in any event non-responsive; and that the contract improperly was awarded on October 25, 1978, before resolution by our Office of Airwest's protest filed on October 24, and without notice to our Office or Airwest of the intention to so award. The contract was completed shortly after award. AGC 00042

As a general rule, bids must be received in the office designated in the IFB not later than the exact time set for the opening of bids. Federal Procurement Regulations (FPR) § 1-2.302, 1-2.303 (1964 ed., circ. 1). Bid opening under the instant IFB was scheduled for 1 p.m., October 20. Three bids, including Airwest's, had been received by 12:30 p.m. Airwest states that HCH's representative did not enter the bid opening room to hand-deliver the firm's bid until 15 to 20 seconds after 1 p.m., and the contracting officer's representative delayed until receipt of the HCH bid to declare the bidding closed.

In a report on the protest, Agriculture states that the HCH representative entered the room prior to 1 p.m., and that all bids were received by that time. Thus, the only evidence of the time of receipt of the HCH bid is the conflicting statements of the parties. In this circumstance, we must accept the statement of the agency, because the protester has not met the burden to affirmatively prove its case. See Custom Burglar Alarm, Inc., B-192351, January 18, 1979, 79-1 CPD 30.

Airwest also asserts that HCH's bid was non-responsive because the firm failed to enter its name

and address in block 17 on the bid form (Standard Form 33) and failed to include with the bid a list of the equipment to be used in the performance of the contract, as required by paragraph 24 of the IFB's Solicitation Instructions and Conditions.

The test of "responsiveness" is whether a bid as submitted is an offer to perform without exception the exact thing called for in the invitation. 49 Comp. Gen. 553, 556 (1970). If the test is met, the bidder is effectively bound by the Government's acceptance to perform in accordance with the invitation's requirements. See Edw. Kocharian & Company, 58 Comp. Gen. 214 (1979), 79-1 CPD 20.

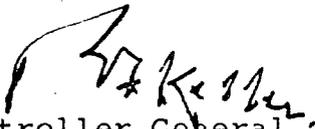
The record indicates that at the bid opening the HCH representative identified the bid as HCH's. In addition, the name and signature of the president of HCH appeared on the bid form in blocks 18 and 19 (although the company name was not indicated), and the firm's identification number for Federal tax purposes appeared in block 6(c). These factors satisfied the contracting officer of the intent to bid by HCH, and the subject omission was waived as a minor informality under FPR § 1-2.405 (1964 ed., circ. 1). Under the circumstances, we believe that the contracting officer properly concluded that HCH intended to be bound by the Government's acceptance of the bid as submitted, and the bid therefore was responsive. Contrast Forest Scientific, Inc., B-192827, B-192796, B-193062, February 9, 1979, 79-1 CPD 188.

With regard to the missing equipment list, the record indicates that the purpose of the list was only to aid the contracting officer in determining whether the bidder was capable of performing the contract. Thus, the list had no bearing on the bidder's obligation to perform, i.e., the bid's responsiveness, but was a matter of bidder responsibility. See 53 Comp. Gen. 396 (1973). Accordingly, the requirement to submit the list could be fulfilled after bid opening. 49 Comp. Gen., supra.

Concerning the timing of the award to HCH, Airwest's protest was filed in our Office on October 24, and the contracting agency was notified of the protest that date by telephone. The contracting officer proposed to award the contract on October 25, prior to our resolution of Airwest's protest, on the basis of urgency, pursuant to FPR § 1-2.407-8(b)(4) (1964 ed. amend. 68). Oral approval from a higher level was obtained on the same date in accordance with FPR § 1-2.407-8(b)(3) and was confirmed in writing shortly thereafter. Accordingly, and in view of our above discussion, the determination to proceed with the contract award on October 25 is not subject to objection by our Office. See LaBarge Incorporated, B-190051, January 5, 1978, 78-1 CPD 7; Starline, Incorporated, 55 Comp. Gen. 1160, 1172 (1976), 76-1 CPD 365. In addition, based on the short time between the filing of Airwest's protest and the urgency award, we cannot object to Agriculture's failure to notify our Office and Airwest of the determination before awarding the contract. In any case, we have held that notification deficiencies of that type are procedural irregularities which do not affect the validity of the contract. New Haven Ambulance Service, Inc., 57 Comp. Gen. 361, 367 (1978), 78-1 CPD 225.

Airwest has also requested reimbursement for certain unstated expenses incurred by the firm. We presume that such expenses include those involved in pursuing the instant bid protest and in preparing a bid under the IFB. However, the costs of pursuing a bid protest are noncompensable. Tennessee Valley Service Company, B-188771, December 8, 1977, 77-2 CPD 442. Moreover, since there has been no showing that the agency deprived the protester of an award to which it was otherwise entitled, there is no basis upon which a request for bid preparation costs can be granted. System Development Corporation, B-191195, August 31, 1978, 78-2 CPD 159.

The protest is denied.

  
Deputy Comptroller General  
of the United States