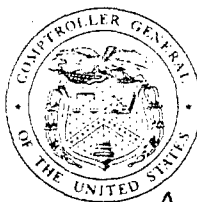


Proc I

DECISION



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

10,490

FILE: B-193781

DATE: June 18, 1979

MATTER OF: Micro Labs Inc.; Bowman Enterprises,  
Inc.

DLG00922

DIGEST:

[Protest of Navy Decision to Cancel IFB]

1. <sup>the</sup> Decision to cancel and readvertise requirements under lots 1-2 and lots 3-4 of IFB arising from reasonable expectation of broadened competition under relaxed geographical restriction cannot be questioned. Consequently, it is unnecessary to consider whether low bidder should have been permitted to revive expired bid.
2. <sup>the</sup> Inasmuch as protester has not met burden of proving its version of facts with probative evidence other than bare statement, ~~GAO~~ cannot conclude that preaward survey team discussed ordering of supplies or equipment with protester.
3. <sup>the</sup> To extent <sup>the</sup> protester under lots 1 and 2 of IFB questioned <sup>the</sup> accuracy of work estimates used in assessing <sup>the</sup> reasonableness of prices received for requirements, ~~issue~~ <sup>was an</sup> is untimely raised under GAO's Bid Protest Procedures (4 C.F.R. § 20 (1978)) since alleged invalidity of estimates should have been known, at latest, before opening, yet it was not raised until after bid opening.

*The protests were denied.*

Micro Labs, Inc. (Micro Labs) and Bowman Enterprises, Inc. (Bowman), have protested the decision of the Naval Supply Center, Department of the Navy, Norfolk, Virginia, to cancel invitation for bids (IFB) No. NOO189-78-B-0066. For the reasons set forth below, we deny the protests.

AGC000019

005605

Background

The IFB was issued by the Navy for the procurement of microfilming services at the Naval Air Rework Facility, Naval Air Station, Norfolk, Virginia, and the Naval Air Rework Facility, Marine Corps Air Station, Cherry Point, North Carolina.

DLG 00238

Norfolk Requirement

The IFB provided that for these requirements the successful bidder must have its producing facility within 50 road miles of the facility.

For these services--described under "Lots" 1 and 2 of the IFB--the Navy received four timely bids, as follows:

"Company	Discount Taken [total]
American Drafting & Laminating, Norfolk, Va.	318,800.38
Information Index Omaha, Neb.	312,378.26
Micro Labs, Inc. Norfolk, Va.	299,952.18
System Management Association Virginia Beach, Va.	864,689.05"

As to the events surrounding the consideration of the low bid of Micro Labs, the Navy's contracting officer reports, as follows:

"Upon review of the bids, the buyer noted that Micro Labs had not acknowledged Amendments 0001, 0002, 0006, and 0007, had not submitted background information, and had made mathematical extension errors in line items 0003AA and 0010AA. The buyer then advised Mr. Cornaro, President, Micro Labs, Inc., of the above by telephone on 24 Nov 78 \* \* \* These deficiencies were determined to be minor informalities \* \* \*.

"On 15 Dec 78, the Regional Procurement Office was contacted by a competitor, who was present at the bid opening, to inquire as to whether or not Micro Labs had extended their bid acceptance period. The buyer then pulled the file and discovered that Micro Labs had allowed their bid to expire and had not notified this office of their desire to extend the acceptance period beyond the original 30 days which they set forth in their bid. [The IFB provided for a 60-day bid acceptance period unless a bidder inserted a different period.]"

Since the Navy viewed Micro Labs' bid as expired and not for further consideration, the Navy then reviewed the bids of the remaining bidders. Because of the "extreme range in prices" submitted under the IFB, the contracting officer determined that "after the low bid expired all other responsive bids" contained unreasonable prices. Further, the contracting officer "felt the possibility of restriction of competition may have existed whereby the Government would have unknowingly limited those contractors who had the capability of doing the work but were unable to qualify because of the 50 road mile [restriction]."

Consequently, the contracting officer decided that it would be in the best interest of the Government to cancel (lots 1 and 2) and expand the road mile requirement to 500 miles.

Cherry Point Requirement

For the services at Cherry Point--described under lots 3 and 4 of the IFB with a 150-mile restriction--the Navy received three timely bids, as follows:

"Company	Discount Taken [total]
Bowman Enterprises	231,053
Information Index	172,652
Systems Management	528,052"

The Navy reports that the bid of Information Index was excluded from consideration because the firm did not have its producing facility within 150 road miles of the facility as required by the IFB for lots 3 and 4.

As to the next low bid of Bowman Industries, the contracting officer reports that she was unable to determine that the bid was "fair and reasonable" because:

(1) Bowman's bid was more than \$50,000 higher than the low bid excluded for geographic reasons and nearly \$300,000 less than the next higher bid--a price spread which suggested that competition did not exist;

(2) A comparison of unit prices offered for identical services at the Norfolk Facility showed Bowman to be higher than three of four other bidders bidding on the same work in most categories;

(3) A comparison of Bowman's current and prior prices for the work on which Bowman is the incumbent contractor showed price increases over the previous contract ranging from 29 to 133 percent;

(4) A comparison of prices bid by other concerns under prior years' procurements with prices those same bidders bid on the questioned procurement showed that Bowman's price increases exceeded the price increases of other contractors in the same business in most instances;

(5) Information from the Naval Supply Center, Charleston, South Carolina, showed that prices quoted to the South Carolina office for the same work were significantly lower than the prices quoted under this IFB.

Because of this analysis, the contracting officer decided that it would be in the best interest of the Government to cancel (lots 3 and 4) and expand the road mile requirement to 500 miles.

#### Resolicitation of IFB Requirements

The contracting officer reports the outcome of the rebidding of these requirements under a 500-road-mile restriction, as follows:

Lots 1 and 2

"The second IFB for this work opened 24 Jan 79, showing [that Micro Labs reduced its price] by \$78,750.18. Further, six of the seven bid prices on the second IFB are less than the first bid price of Micro Labs. Also, it should be noted that the incumbent contractor, who has the best knowledge of the work to be done, reduced his price by \$150,050.80 which further supports the Contracting Officer's suspicions that possibly true full and free competition may not have been achieved due to the few number of companies capable of doing this work located within the 50 road mile distance around Norfolk, Virginia."

Lots 3 and 4

"The second IFB for this work opened 24 Jan 79, showing [that Bowman reduced its] price from \$231,053.00 to \$157,514.00 with minor changes being made in the solicitation. There was a slight reduction in the hand time and a requirement that a knowledgeable person from the successful contractor be on call to handle unforeseen problems which may arise. This is less than the lowest bid which was declared non-responsive. This is lower than the same bid which the protestant did not feel was realistic considering the cost of the work to be done. We received bids from three contractors previously unable to quote because of the mileage requirement. All bids are very competitive in price which is indicative of a good competitive field. All contractors submitted bids significantly lower on the second IFB which the Contracting Officer feels supports the theory that true competition was restricted in IFB NO0189-78-B-0066."

The grounds of the protests here are summarized below.

#### Micro Labs' Protest

(1) Micro Labs' bid for lots 1 and 2 was properly for acceptance since "Mrs. Garret of the Norfolk Naval Supply Center" orally agreed to an extension of the bid before the company's original bid expired; in any event, the Navy was responsible for the delay in not awarding the contract within the initial 30-day acceptance period of the company's bid.

(2) The resolicitation of the requirements was improper, especially since it was made before GAO ruled on the company's protest.

The reduced prices on the resolicitation are essentially due to quantity reductions; in any event, the reduced prices can be explained by the exposure of the prices submitted on the first solicitation.

(3) The Navy's preaward survey team effectively awarded Micro Labs a contract by telling the company to "gear up" for the contract in mid-December 1978 such that Micro Labs ordered "required equipment and supplies."

#### Navy Response to Micro Labs' Protest

(1) The Navy properly rejected Micro Labs' bid under the authority of GAO decisions set forth in 42 Comp. Gen. 604 (1963) and Veterans Administration Request for Advance Decision, B-191019, January 23, 1978, 78-1 CPD 59. Moreover, the Navy denies that it agreed to a verbal extension of Micro Labs' bid acceptance period.

(2) See the above reasons explaining why the Navy canceled and readvertised the requirement; moreover, the bidding results of the resolicitation support the decision to cancel.

(3) The preaward survey team states that no one on the team discussed ordering any supplies with Micro Labs.

#### GAO Analysis

(1) Clearly, there is a factual dispute as to whether an oral agreement was reached to extend Micro Labs' bid before that bid expired by its own terms. Micro Labs, however, has not met the burden of proving its version of the facts by introducing probative evidence--other than its bare statement of the events in question. See Phelps Protection Systems, B-181148, November 7, 1974, 74-2 CPD 244. Thus, Micro Labs' bid has to be considered as expired. It is clear, however, that Micro Labs has insisted that it be allowed to revive its expired bid.

Notwithstanding Micro Labs' position, we consider it unnecessary to discuss the propriety of reviving the company's bid in view of our conclusion under paragraph 2, below.

(2) Contracting officers have broad powers of discretion in deciding whether a solicitation should be canceled; consequently, we do not question these decisions so long as they are reasonably founded under existing precedent. The Gerstenslager Company, B-192705, November 29, 1978, 78-2 CPD 375.

We have recognized that if there is a reasonable expectation that bidders located outside the "immediate area of a respective field procurement office and/or the site of the using agency" will be able to comply with the requirements of a particular procurement, competition should be broadened by enlarging the geographic restriction originally contemplated. See 50 Comp. Gen. 769 (1971).

There is no question that competition was broadened on the resolicitation for lots 1 and 2 since--apart from the dispute over the precise meaning of the reduced prices received on the reprocurement--seven, rather than four, companies competed for the award. Moreover, we cannot question the Navy's position that companies with producing facilities within a 500-mile-road radius of Norfolk will be able to comply with the requirements of the procurement. Although it is unfortunate that this enlarged radius could not have been employed in the first procurement, we cannot question the decision to cancel the original procurement and readvertise because of this circumstance.

There is no statutory or regulatory requirement--contrary to the protester's apparent belief--that a procuring agency must await a GAO decision on a protest prior to initiating a procurement (or a reprocurement).

(3) Clearly, there is a factual dispute as to whether the preaward survey team made statements concerning the ordering of equipment and supplies. As with the factual dispute discussed under (1) above, it is

our view that Micro Labs has not met the burden of proving its version of the facts by probative evidence other than its bare statement of the events in question. Consequently, we cannot conclude that the preaward survey team discussed the ordering of supplies or equipment with Micro Labs.

Bowman Enterprises, Inc., Protest

(1) Bowman's bid for the work was reasonable, especially since the Navy work estimates are "substantially inflated" for this and similar procurements for prior years' work, thereby causing prudent bidders, like Bowman, to increase their bids; moreover, the lower prices quoted by other bidders were caused by failure of those bidders to take into account an IFB requirement relating to the "exigencies of Form PS 3602" which raises the contractor's cost significantly.

(2) There were at least two other bidders who could have competed under the 150-road-mile restriction--thus showing the reasonableness of the original restriction; moreover, the reduced prices received on the recompetition may be attributed to the increased volume of work involved rather than increased competition.

(3) The Navy actually canceled the IFB so as to "allow Information Index to compete at the lower price even though they did not originally comply with the mileage requirement."

Navy Position

(Set forth above on pages 4 and 5)

Analysis

(Keyed to the above-numbered grounds of Bowman's protest.)

(1) Essentially, Bowman is protesting the validity of the work estimates set forth in the canceled IFB and in earlier procurements through the company's questioning of the above price comparisons of the contracting officer. Since the alleged invalidity of the

estimates should have been known, at the latest, before November 13, 1978, the date on which bids were opened, yet not raised until after bid opening, we consider this issue untimely under our Bid Protest Procedures, 4 C.F.R. § 20 (1978).

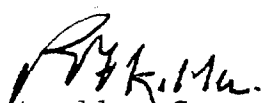
To the extent, moreover, that Bowman questions bidders' compliance, for pricing purpose, with "Form PS 3602," we point out that all bidders are charged with notice of all IFB requirements--including compliance with this form--and, thus, it must be presumed that the prices bid reflect those requirements.

(2) As noted above under our response to the Micro Labs' protest, we have held that competition should be broadened by enlarging the geographic restriction originally contemplated if there is a reasonable expectation that bidders located outside the immediate area of the procuring or using office will be able to comply with the requirements of a particular procurement. See 50 Comp. Gen., supra.

There is no question that competition was broadened on the resolicitation for lots 3 and 4 since bids were received from three companies previously unable to bid because of the original mileage requirement. Although we have no knowledge as to the actual reasons why the two additional companies which Bowman alleges could have bid under the original restriction did not so bid, the fact that three additional companies bid on the reprocurement supports the contracting officer's decision to cancel and readvertise irrespective of the dispute between Bowman and the Navy over the meaning of the reduced prices received.

(3) Based on our review of the record, we do not agree that the Navy was attempting to "direct" the award of the contract to any particular company.

Protests denied.

  
Acting Comptroller General  
of the United States