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DECISION



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

FILE: B-201319.2

DATE: December 11, 1981

MATTER OF: Midland Transportation Co.

DIGEST:

Cancellation of entire IFB after bid opening because IFB contained incorrect small business set-aside clause is proper where competition for unrestricted portion of IFB may have been distorted because of inappropriate set-aside provision.

Midland Transportation Co. requests reconsideration of our decision B-201319, August 4, 1981, 81-2 CPD 89 denying its protest of the cancellation of Air Force invitation for bids (IFB) No. F25600-80-B-0072 and the issuance of IFB No. F25600-81-B-0001 resoliciting the same requirements. The original IFB was for packing and crating services in five geographic areas, and contained several items of services to be performed in each area. Certain items in three areas were "partially" set aside for small business. The Air Force canceled the first IFB and resolicited the requirements because the original IFB contained an improper notice of partial set-aside whereas the Air Force intended to totally set aside those items.

Our prior decision denied Midland's protest based on our understanding that Midland was the low bidder for certain set-aside items. In fact we were mistaken. Midland was the low bidder on certain non-set-aside items and protested the cancellation as to those items only.

Midland asserts that the erroneous small business set-aside notice affected the set-aside portion of the solicitation only and that only this portion should have been canceled and readvertised. Midland believes that

the unrestricted portion of the solicitation should not have been canceled and that award should have been made to the low bidders for that portion of the original solicitation. We do not agree.

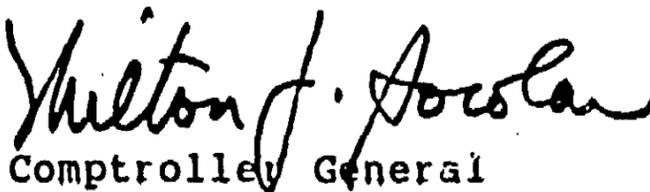
We believe that our original decision, which sustained the administrative decision to cancel and re-advertise the entire solicitation by denying the protest, is correct, notwithstanding our original misunderstanding of the facts. The main premise of our original decision was that the use of the incorrect set-aside clause (notice of a partial small business set-aside when a total small business set-aside for certain items was intended) rendered the solicitation confusing and ambiguous, so that it was proper to cancel the original solicitation and issue a new one. This was so because the partial small business set-aside clause required bidders that desired set-aside awards to bid on the non-set-aside portion only, rather than bidding on the set-aside portion as in the case of a total set-aside.

We do not believe the confusion was necessarily limited to the set-aside portion of the solicitation as the protester contends, but may well have also extended to the non-set-aside portion, thus distorting the competition for that portion of the solicitation. Because of the inappropriate instructions that bidders seeking set-aside awards must bid on the non-set-aside portion, we do not know who might have bid on the non-set-aside portion in various geographical areas if the confusion did not exist, or how prices were influenced for those that did bid by the inclusion of the improper clause. For example, some small business bidders bid on the non-set-aside portion (as required by the partial set-aside clause) while others did not. While it may be that the confusion did not affect the unrestricted portions of the procurement, the fact remains that there is no reasonable certainty that the unrestricted portions were not affected.

We recognize the broad authority vested in the contracting agency to cancel a solicitation and re-advertise it, especially where there may be an adverse impact on the integrity of the competitive bidding

system. See Scott Graphics, Inc.; Photomedia Corporation,
54 Comp. Gen. 973 (1975), 75-1 CPD 302. Since in this
case small business bidders might have been compelled
by the erroneous clause to bid on non-set-aside items
they did not want, at the expense of other bidders, we
cannot say that the contracting officer's decision to
cancel and resolicit the entire procurement was not rea-
sonable.

The original decision is affirmed.

for 
Comptroller General
of the United States