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DECISION



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

FILE: B-208631

DATE: May 23, 1983

MATTER OF: Monarch Enterprises, Inc.

DIGEST:

1. Where protester by letter to agency before bid opening conveyed without use of the word "protest" its dissatisfaction with specific areas of the invitation and asked for corrective action, protest submitted to GAO within 10 working days of bid opening without agency having taken corrective action is timely under GAO Bid Protest Procedures.
2. Since six responsive bids were received, it does not appear from the record that adequate competition was precluded by any lack of information in the invitation.
3. Mere allegation of fraud is not sufficient for consideration in context of bid protest. Moreover, the fact that award is made to a firm which has had previous contract with the agency does not in itself indicate any fraudulent relationship between agency and awardee.
4. Allegations of restraint of trade, anti-trust violations and collusive bidding are matters for the Attorney General and GAO will not consider them under its bid protest function.

Monarch Enterprises, Inc., protests alleged deficiencies in invitation for bids (IFB) No. MWR 2-43 issued by the Department of the Interior's National Park Service for the provision and installation of exhibits in the Jefferson National Expansion Memorial's Old Courthouse Museum in St. Louis, Missouri. Monarch contends that the IFB did not clearly set forth the minimum needs of the Government, or contain information necessary to allow adequate competition. Furthermore, Monarch asks that we determine if fraud, collusion or restraint of trade was involved in this procurement. We deny the protest.

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A threshold matter raised by Interior concerns the timeliness of Monarch's protest. Interior contends that Monarch's protest is untimely because it concerns alleged deficiencies in the IFB yet was not filed with our Office until 1 week after the August 9 bid opening date. In this regard, our Bid Protest Procedures require that protests based on alleged improprieties in an invitation be filed with the contracting agency or our Office prior to bid opening. 4 C.F.R. § 21.2(b)(1).

Monarch did submit a letter to the contracting officer dated July 4 in which it outlined deficiencies it found in the IFB and made recommendations for their correction. Although Interior acknowledges receipt of this letter, the agency contends that the letter did not constitute a pre-bid opening agency protest. Interior, considering the letter to be nothing more than a "generalized expression of dissatisfaction," did not respond to Monarch. Bid opening took place as scheduled on August 9.

In its letter to the contracting agency, Monarch did not use the word "protest." It began with a statement of why Monarch believed the solicitation to be deficient, followed by a series of "recommendations" for eliminating the problems it perceived as well as a summary of its "complaint" with regard to the bid package. There is some language in the letter which suggests that Monarch had decided not to bid on this procurement and simply was expressing its dissatisfaction; other language suggests that Monarch would be interested in bidding if the solicitation were amended in accord with its recommendations.

While it would have been preferable for Monarch to have used the word "protest" in its letter to the agency, its failure to do so is not decisive as to whether or not that letter can be considered an agency protest. Pitney Bowes, Inc., B-200016, December 30, 1980, 80-2 CPD 448. In this regard, we have held that the intent to protest may be conveyed by an expression of dissatisfaction and a request for corrective action. Applied Devices Corporation, B-203241, September 9, 1981, 81-2 CPD 207. In our view, therefore, Monarch's July 4 letter constituted an agency protest because it adequately conveys Monarch's dissatisfaction and belief that the IFB should be clarified in certain areas. When the agency opened bids without making all the changes Monarch had requested (some of Monarch's concerns were "cured" by amendments to the IFB) the agency acted adversely

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to Monarch's protest. Thus, Monarch's protest to our Office, which was filed within 10 working days of the August 9 bid opening--is timely under our Bid Protest Procedures. 4 C.F.R. § 21.2(a).

Under this contract, the contractor is to produce and install sepiatone black-and-white and color photographs and photomurals; silk screened murals; silk screened text; plexiglas exhibit surfaces; painted wood exhibit surfaces; exhibit cases and exhibit wall panels. The work was to be done in accordance with certain reduced-size drawings and a design book, furnished by the agency with the solicitation. In addition, the agency advised bidders that they could obtain full-size drawings at their expense from a specified commercial source and the agency recommended that bidders visit the site prior to bidding in order to assure that they had a complete understanding of the contract's requirements.

Monarch's contention is that the description of the agency's needs as shown in the bid package is so unclear that a bidder cannot formulate a bid without an unreasonable expenditure of time and effort. Monarch alleges that the project would be "biddable" only by an organization with "inside information" or prior experience on the project. Monarch's principal objection to the solicitation is that it does not sufficiently reduce to lists or schedules the items to be furnished. It also finds those schedules which do appear in the solicitation to be unsatisfactory.

The 28 pages of architectural drawings included with the solicitation included architectural plans of the old courthouse, architectural and exhibit details, and plans and elevations of the galleries and corridors in which the work was to be performed. The elevations for each gallery gave the identity and location of objects and artifacts exhibited there, as well as structures within the room such as platforms, pylons (large structures, usually free-standing and triangular in shape, on which objects, texts and pictures were displayed), exhibit wall panels, sepiatone and color photo murals and silk-screen murals. The elevations showed each wall of each room and each side of free-standing objects--such as the triangular pylons--and indicated what was displayed on them. On the elevations, items such as photo murals were briefly identified by subject and an identification number which also indicated whether the mural was sepiatone ("S") or color ("C"). By examining the

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drawings and then referring to the Exhibit Design Book, which gave more specific information about each item, the bidder could obtain the exact reproduction dimension of the item and its source, as well as any caption which would accompany it. In order to bid this project, therefore, it would be necessary for the bidder to analyze and extract information from the architectural drawings and Exhibit Design Book and to consult the IFB specifications, which among other requirements, established which materials, processes and level of workmanship would be acceptable.

With regard to those schedules which do appear on the drawings, Monarch asserts that the schedule of wall exhibit panels and pylons which appears on drawing E1-1 is "too small to read." It also states that the schedule of exhibit display cases which appears on drawing A2-2 is deficient in that it refers to detail 20 on drawing A2-1 "for details," yet drawing A2-1 was not in Monarch's bid package.

In response to Monarch's protest, the procuring activity states that it considers the plans and specifications for the project, which were developed in coordination with the Harpers Ferry Center of the National Park Service, adequate for competitive bidding, as evidenced by the fact that none of the other 55 firms to whom the IFB was issued raised any question concerning the adequacy or completeness of the specifications and that six responsive bids were received.

We cannot conclude on the basis of this record that the solicitation was so deficient as to preclude adequate competition. While it might have been a useful aid to bidding had information about the items to be provided been summarized in lists or schedules, we do not believe the solicitation is legally deficient because information was not presented in that form and bidders were required to obtain it from the detailed drawings provided. We agree with the protester that the schedule on drawing E1-1 is printed in such small type that it is difficult to read. We do not view that as a significant defect in the solicitation, however, since that information could be obtained from the full-size drawings which bidders could purchase. We do not think it unreasonable for the agency to provide as here, reduced size drawings with the bidding package with larger drawings available at their own expense to those seriously contemplating bidding. Drawing A2-1, which Monarch states was missing from its bid set, was included in the copy of the IFB provided to our

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Office. Although we cannot account for its absence in Monarch's copy of the IFB, we have no reason to believe the agency would not have provided Monarch a copy upon its specific request for one. Finally, the fact that six responsive bids were received indicates to us that the solicitation did not lack the information necessary for adequate competition.

Finally, in conjunction with its allegation that the IFB specifications served to limit rather than encourage competition, Monarch asks that we "analyze the responding bidders to determine if fraud or collusion or restraint of trade may be involved as inferred by the prior relationship of the successful bidder to the agency."

The agency's report to our Office included the bidder's mailing list for this procurement, the abstract of bids received, and the information that the low bidder-awardee had successfully performed a prior contract for the agency in 1975-76. The burden is on Monarch, based upon this information or any other facts known to it, to substantiate its conjecture that fraud may have occurred. Courier - Citizen Company, B-192899, May 9, 1979, 79-1 CPD 323. This it has not done. Its speculative statement provides no basis for us to question the propriety of the award: there is nothing inherently improper in award being made to a firm which had successfully completed another project for the agency in the past. In addition, we do not consider under our bid protest function allegations regarding restraint of trade, collusive bidding or anti-trust violations; these are matters for the Justice Department. Flight Refueling, Inc., B-207980, July 13, 1982, 82-2 CPD 48.

The protest is denied.

for *Nancy R. Van Cleave*
Comptroller General
of the United States