

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

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FILE: B-213799

DATE: March 19, 1984

MATTER OF: Architectural Window Systems, Inc.

DIGEST:

1. Procuring agency's decision, following termination of protester's contract, to award to original low bidder on the basis of a revived bid was proper where agency's misinterpretation of specifications resulted in withdrawal of low bid on the basis of a mistake that did not exist.
2. Allegation that awardee has not met contract specifications is a question of contract administration and does not affect the validity of the award.

Architectural Window Systems, Inc. (AWS), protests the award of a contract to Andrews and Parrish Co. (A&P) under invitation for bids (IFB) No. DAAD05-83-B-5663, issued by the United States Army Test and Evaluation Command (Army), Aberdeen Proving Ground, Maryland. We deny the protest.

The IFB was issued for the replacement of existing windows in family housing with double-pane, insulating glass windows, at least 3/16-inch thick. Thirteen bids were received in response to the IFB. The Army, noting disparity between the bid prices and the government estimate, requested bid verification from several bidders. Some of the bidders had proposed 3/32-inch glass instead of the specified 3/16-inch glass. The Army advised bidders that the specification was a firm requirement. When the two lowest bidders, for various items, including A&P, documented that their bid prices were based on 3/32-inch-thick, factory-fabricated windows and that the 3/16-inch requirement would substantially increase their cost, the Army permitted each to withdraw its bid and award was made to AWS and Fletcher and Sons, Inc. (Fletcher).

At the preconstruction conference, the Army discovered that both awardees intended to furnish factory-fabricated windows with 1/8-inch-thick glass. Investigation of the matter with facilities engineering personnel led to the

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realization that the Army had misinterpreted the specification. Instead of only allowing 3/16-inch glass thickness, the specification also allowed for factory-built windows in accordance with industry standards, which A&P had offered in its bid. The contracting officer concluded that bids had been evaluated improperly and, thus, the awards were improper, since the low bidders had been permitted to withdraw based on an erroneous interpretation of the specifications.

The Army's reevaluation of the bids indicated that eight of the nine contract line items should have been awarded to A&P, the initial low bidder for these items, with the one remaining line item going to AWS. The contracting officer informed A&P that its original bid was acceptable and that, if it was reinstated award would be made. A&P reinstated its bid and award was so made.

With respect to the original awardees, the Army negotiated a no-cost termination settlement agreement with Fletcher because the contractor had made little progress in anticipation of performing the contract. AWS's contract was terminated for convenience because it had incurred costs in preparation to begin work.

AWS principally questions the award to A&P after its bid had been permitted to be withdrawn. The protester points out that all bidders were afforded the same opportunity to review plans and specifications and, because A&P chose to withdraw its bid, it should be estopped from participating in the contract. AWS also complains that windows recently installed by A&P violate the contract specifications.

In our view, the Army's award to A&P was proper. The facts in this case are analogous to those in Baker Manufacturing Company, Inc.; Joerns Furniture Company; Carsons of High Point North Carolina, 59 Comp. Gen. 573 (1980), 80-2 CPD 1. There, the procuring agency erroneously canceled a solicitation based on a misinterpretation of an agency order, bids were returned to bidders and the bids then expired. After discovering the mistake, the agency reinstated the solicitation, allowed the low bidders to revive their bids, and then made awards. After finding that no "cogent and compelling reason" existed to allow the cancellation, we approved the revivals and awards because, as a general rule, bids which have expired because

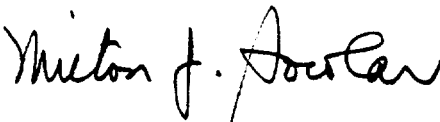
a solicitation was erroneously canceled may properly be revived and accepted upon the solicitation's reinstatement. We see no legal difference between the government erroneously granting a bidder permission to withdraw its bid and the erroneous cancellation of a solicitation. In each case, the government corrected an improper procurement action--here, erroneously granting AWS permission to withdraw its low, responsive bid on the basis of a mistake that did not exist. Contrary to AWS's assertion, a bidder has no choice in withdrawing a firm bid. See Defense Acquisition Regulation § 2-406 (Defense Acquisition Circular No. 76-36, June 30, 1982).

Finally, in reply to AWS's allegation regarding A&P's windows delivered under the contract, the Army states:

"2. The allegation that Andrews and Parrish Co. has not met . . . [t]he plans and specifications is true. However, only two windows have been installed to date as sample installations and have not been accepted or approved. New submittals are being prepared, and another sample will be installed and inspected for compliance with the specifications. All aspects of the installation and window shall comply with the specifications before approval of acceptance by the Government."

This is a matter of contract administration and does not affect the validity of the award. See C.R. Daniels, Inc., B-207937, July 1, 1982, 82-2 CPD 13.

The protest is denied.

for 
Comptroller General
of the United States