

DECISION

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

FILE: B-216790

DATE: January 22, 1985

MATTER OF: Don's Wheelchair & Ambulance Service, Inc.

DIGEST:

1. Where protester's bid indicates discrepancy in unit and extended prices and either price reasonably could have been intended, agency may not rely on bidder's confirmation of bid. Permitting bidder to elect between two prices, only one of which will result in award to bidder, after competitor's bid prices were revealed, allows bidder unfair advantage contrary to principles of competitive bidding.
2. Protest alleging improprieties in a solicitation is dismissed as untimely when filed after bid opening because GAO Bid Protest Procedures require filing prior to bid opening.

Don's Wheelchair & Ambulance Service, Inc., protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. 525-3-85, issued by the Veterans Administration Medical Center, Brockton, Massachusetts (VA), for ambulance, hired car, and wheelchair patient transportation services. Don's also filed suit in the United States District Court for the District of Massachusetts (Don's Wheelchair and Ambulance Service, Inc. v. Benaski, Civil Action No. 84-3017-T) seeking a preliminary injunction. The preliminary injunction was denied, but the court has requested our opinion on the matter.

We deny the protest in part and dismiss it in part.

Bids were opened on September 19, 1984, and Don's, an incumbent contractor, was the apparent low bidder for the requirements contract. However, after reviewing Don's bid, the contracting officer discovered what

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appeared to be calculation errors because the total prices bid on several items did not equal the estimated quantity times the unit cost. On September 20, 1984, the contracting officer, suspecting a mistake in bid, called Don's to request bid verification. Don's denied any error, explaining that its bid indicated a total amount for mileage which it believed would actually be received, taking into account mileage deductions imposed by the VA on its current contract. The contracting officer, believing that, in effect, Don's used lesser estimated quantities than those listed in the solicitation to calculate its total price for several bid items, recalculated Don's bid based on the estimated quantities listed in the solicitation. This calculation increased Don's price and Don's was no longer the low bidder.

On September 21, the contracting officer informed Don's that it was not the low bidder. The contracting officer told Don's that it could not use other than the estimated amount of mileage in the solicitation to calculate its bid since that would result in its having a lower total aggregate price than other bidders, even though its unit prices were higher, and would give it an unfair advantage.

On September 27, Don's protested to VA the September 24 award of the contract to another bidder. The contracting officer denied the protest on October 2, on the grounds that Don's bid was nonresponsive for not complying in all material respects with the IFB.

Don's contends that the contracting officer should not have determined that it was not low by recalculating its bid prices. Don's also objects that the solicitation was vague, subject to radically different interpretations, and confusing.

Although it appears that the contracting officer recalculated Don's bid prices using the estimated quantities in the solicitation, we need not address the merits of this basis for rejecting Don's bid since, under applicable case law, Don's bid could not be considered for award. Where a protester's bid indicates a discrepancy in unit and extended prices and either price reasonably could have been

intended, an agency may not rely on the bidder's confirmation of its bid. Permitting the bidder to elect between two prices, only one of which will result in award to the bidder, after competitors' bid prices are revealed, allows the bidder an unfair advantage contrary to principles of competitive bidding. Hudgins Construction Co., Inc., B-213307, Nov. 15, 1983, 83-2 C.P.D. ¶ 570. In our view, Don's bid was subject to two reasonable interpretations, and under one it was not low. Under these circumstances, Don's bid was not eligible for award.

With respect to Don's contention that the solicitation was vague, our Bid Protest Procedures require that a protest alleging improprieties in a solicitation which are apparent prior to bid opening be filed prior to bid opening. 4 C.F.R. § 21.2(b)(1) (1984); Turbine Engine Services Corp., B-215281, May 29, 1984, 84-1 C.P.D. ¶ 582. Further, a bidder may not participate in a procurement by submitting a bid and complain only after it lost the award. Airco, Inc. v. Energy Research and Development Administration, 528 F.2d 1294, 1300 (7th Cir. 1975). Since Don's did not protest the alleged improprieties until after bid opening, its protest on this issue is untimely and will not be considered.

The protest is denied in part and dismissed in part.

for 
Comptroller General
of the United States