

DECISION

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

FILE: B-217107

DATE: February 21, 1985

MATTER OF: United States Playing Card Company

DIGEST:

1. Where the parties to the telephone conversation in which the protester made its bid are in total disagreement as to whether a prompt payment discount was offered, the protester has not met its burden of affirmatively proving its case.
2. Resolicitation of procurement is not recommended since there is no evidence of unfairness or unreasonableness concerning the protester's competing for the procurement and adequate competition and reasonable prices were obtained.

The United States Playing Card Company (USPCC) protests the proposed award to Western Publishing Company, Inc., (Western) under Government Printing Office (GPO) Solicitation No. 455-206. USPCC contends that its bid included a prompt payment discount which made its bid low and that it should be awarded the contract. The GPO denies that USPCC's telephonic bid included any prompt payment terms.

We deny the protest.

The initial GPO solicitation required delivery of 715,838 specially made decks of cards to the Department of the Army. Invitations for bids (IFB's) were mailed to 20 prospective bidders on October 16, 1984, with bid opening scheduled for October 26. Telegraphic or telephonic bids were acceptable under the solicitation's terms which required delivery on the contract on or before January 23, 1985, and three bids, including a telephone bid from USPCC, were received as follows:

Western Publishing Co.	\$423,055.00 net
USPCC	\$493,928.22 1 percent 30 days
Arrco Playing Card Co.	\$524,709.25 net

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The bids of Western and Arrco were determined to be nonresponsive because the delivery dates were qualified. USPCC's bid was considered to be excessive by the contracting officer who sought and received approval from the GPO Contract Review Board on November 1, 1984, to cancel and resolicit, using an extended delivery schedule. On November 2, the contracting officer sent telegrams soliciting rebids to be opened November 7, with shipping under the contract to be completed by February 21, 1985. According to GPO, two bids were received on the resolicitation as follows:

Western Publishing Co.	\$418,009.00 net
USPCC	\$418,765.23 net

GPO reports that USPCC's bid was submitted telephonically to the GPO contract specialist handling the procurement at 10:47 a.m. on November 7, 1984. The GPO contract specialist provided an affidavit in which he states that during the transmittal of the bid the USPCC official initially stated a discount period of less than 20 days and that he reminded the USPCC official that a period less than 20 days would not be considered in accord with GPO policy. The contract specialist further states that the USPCC official excused himself from the conversation indicating that he wished to confer with a fellow employee, after which he returned to the telephone and indicated the bid was "net." The GPO specialist also states that he read the bid back as "net" to the USPCC official and no request for clarification was made.

USPCC's position regarding the terms offered in the resolicitation is quite different. The USPCC official in charge of the procurement provided an affidavit in which he states that in the telephonic rebid on November 7, he offered prompt payment terms of 1 percent 30 days, net 31 days. USPCC offers several considerations in support of its bidding official's position such as the fact that USPCC had offered the same prompt payment terms in its original bid, and it was USPCC policy to offer the same discount terms for all large contracts. USPCC also points out that its president, from whose office the rebid call was made, recalls the contracting official interrupting his rebid conversation to confirm to him that USPCC was in fact offering its standard prompt payment terms. Finally, USPCC's confirming telex, which was received by GPO the next day, contained USPCC's discount terms.

However, the GPO contract specialist states he was contacted after 4:00 p.m. on November 7, by a second USPCC official whom he advised concerning the effect a prompt payment discount would have had, and who in turn made it clear that USPCC's confirming telex had not yet been sent. Moreover, GPO points out that while USPCC states it is a company policy to offer discount terms on similar contract bids, the firm in fact submitted a "net" bid on a similar procurement on October 31, 1984, the week before the bid in question.

What remains is an irreconcilable dispute of fact between the parties. The GPO maintains that USPCC's telephone bid on this procurement on November 7 did not include a prompt payment discount which could be applied to its bid price of \$418,765.23. Consequently, its bid was not low when compared to the bid of \$418,009 submitted by Western Publishing Co. On the other hand, USPCC contends that in fact it did bid the discount and therefore it had the low bid and should be awarded the contract. Alternatively, the protester contends that the solicitation should be canceled and resolicited.

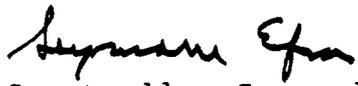
Based on our review of the record, we cannot say that the protester has met its burden of affirmatively proving its case since the only real evidence before our Office is the conflicting statements of the protester and the agency. Adams-Keleher, Inc., B-213452, Mar. 6, 1984, 84-1 C.P.D. ¶ 273; Protex Systems, Inc., B-213228, Mar. 5, 1984, 84-1 C.P.D. ¶ 265. Where, as here, there is an irreconcilable conflict between the protester and the agency on a factual matter and there is no documentary support for either version of the facts, the protester has not met its burden of establishing its version of the facts. See, e.g., National Council for Urban Economic Development, Inc., B-213434, Aug. 1, 1984, 84-2 C.P.D. ¶ 140.

The protester urges that the miscommunication between the parties and the misunderstanding of its intended bid by the agency provide a basis for this Office to rule that the procurement should be canceled and resolicited.

We judge the propriety of a particular procurement from the standpoint of whether adequate competition and reasonable prices were obtained. On the basis of the record here we are unable to conclude that competition for this procurement was inadequate or that the prices obtained

were unreasonable. See Adams-Keleher, Inc., B-213452, supra, and Maintenance Pace Setters, Inc., B-212757, Jan. 23, 1984, 84-1 C.P.D. ¶ 98; E & I, Inc., B-195445, Oct. 29, 1979, 79-2 C.P.D. ¶ 305.

Accordingly, we deny the protest.

for 
Comptroller General
of the United States