



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: ADAK Communications Systems, Inc.
File: B-222546
Date: July 24, 1986

DIGESTS

Bids which expired after improper cancellation of IFB may be revived upon reinstatement of the IFB where no bidders are prejudiced.

DECISION

ADAK Communications Systems, Inc. (ADAK), protests the award of a contract to Dailey-Wells Communications, Inc. (Dailey-Wells), under invitation for bids (IFB) No. F41800-85-B-9009 issued by the United States Air Force for the maintenance and support of intrabase radio equipment at Lackland Air Force Base, Texas. ADAK contends that the agency improperly reinstated a canceled solicitation and allowed the awardee to revive its expired bid.

We deny the protest.

Five bids were received at bid opening on September 16, 1985. Dailey-Wells was the low bidder and ADAK was second low. At the time this procurement was being conducted, similar procurements for the maintenance and support of intrabase radio equipment at Kelly and Brooks Air Force Bases, Texas (IFB Nos. F41800-85-B-8322 and F41800-85-B-9722, respectively), also were being conducted. Due to a protest filed with the agency against the Kelly solicitation, the Air Force reviewed the Lackland solicitation prior to making an award and determined that the IFB incorrectly described the government's needs by stating fixed quantities of radios for maintenance when the government's needs actually were for estimated quantities and, therefore, a requirements contract. The Air Force found this error in all three solicitations and, consequently, in October, canceled all three solicitations. It retained the bids received.

ADAK, the low bidder under the Kelly and Brooks solicitations, filed protests with our Office against the cancellation of those two solicitations. We found in ADAK Communications Sys., Inc., B-220613, Feb. 5, 1986, 86-1 CPD ¶ 131, and ADAK Communications Sys., Inc., B-220413, Feb. 19, 1986, 86-1 CPD ¶ 173, that the post-bid-opening

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cancellation of those solicitations was unreasonable because: 1) the solicitations expressly provided for additions or deletions of radios and, therefore, any award under the solicitations would satisfy the government's needs; and (2) the specified fixed quantities did not prejudice the bidders. We recommended that the IFB's be reinstated and the contracts be awarded to ADAK as the low bidder. The agency followed these recommendations.

On April 1, 1986, relying on the decisions of our Office on ADAK's protests, the contracting officer determined that the Lackland solicitation also was canceled improperly and should be reinstated. At the request of the agency, Dailey-Wells agreed to revive its original bid, and it was awarded the contract on April 24.

ADAK contends that where, as here, cancellation is based on inadequate specifications and the public interest, the contracting officer is required to proceed with a new acquisition, instead of reinstating a canceled solicitation. It claims that the determination that the other two solicitations were canceled improperly does not mean that this solicitation was canceled improperly also, for each case must be decided on its own merits. ADAK further contends that Dailey-Wells' bid could not be revived because the firm's bid expired November 16, 1985, the last day of the 60-calendar-day bid acceptance period specified in the solicitation and, therefore, Dailey-Wells is ineligible for award and could not extend its bid acceptance period in order to be considered for award. ADAK argues that even if Dailey-Wells could revive its bid, cancellation of the solicitation also canceled the remaining bid acceptance period. In addition, ADAK argues that allowing Dailey-Wells to revive an expired bid was tantamount to a sole-source negotiated procurement.

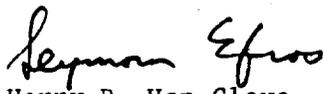
Initially, we find no legal basis to object to the agency decision to reinstate the solicitation. Our Office has sanctioned the reinstatement of a canceled IFB when to do so would work no prejudice on the rights of others and would promote the integrity of the competitive procurement system. Suburban Indus. Maintenance Co., B-188179, June 28, 1977, 77-1 CPD ¶ 459, modified on other grounds, November 29, 1977, 77-2 CPD ¶ 418. We found that reinstatement of the Kelly and Brooks solicitations was proper because they were improperly canceled and, while ADAK suggests that this situation may be different than those, there is no evidence in the record to support that suggestion. We therefore find that reinstatement of the canceled solicitation was proper here because it protected the integrity of the competitive procurement system by reinstating an improperly canceled solicitation and avoiding an unfair bidding situation since bids have been made public. See Lanier Business Prods., Inc., B-203977, Feb. 23, 1982, 82-1 CPD ¶ 159.

In this connection, bids which expired after cancellation may be revived and accepted upon the solicitation's reinstatement, if doing so would not compromise the integrity of the competitive procurement system. Trojan Indus. Inc., B-220620, Feb. 10, 1986, 86-1 CPD ¶ 143. Circumstances that compromise the system's integrity are where the bidder offered an acceptance period shorter than other bidders (if the IFB afforded bidders the option to offer less than a standard timeframe that otherwise would be presumed to apply), or where the bidder expressly or impliedly refused a request to extend its bid and later granted an extension as its own interests dictated. That is because these circumstances limit the bidder's exposure to marketplace uncertainties and reduce the bidder's risk in a manner not afforded the other bidders. Arsco Int'l., B-202607, July 17, 1981, 81-2 CPD ¶ 46.

The revival of Dailey-Wells' expired bid was proper under this standard. Dailey-Wells offered the 60-calendar-day acceptance period requested by the IFB, never refused the agency's request to extend its bid, and consented to revival of its original low bid. Thus, Dailey-Wells' revival of its bid did not prejudice the competitive procurement system. Further, contrary to ADAK's assertion that this was a sole-source award, the record indicates that award to Dailey-Wells was based on competition under the reinstated solicitation--competition that ADAK participated in--and was made in accordance with the award criteria set forth in the solicitation.

The protest is denied.

The protester has also requested that it be reimbursed its costs of pursuing this protest, including attorney's fees. There is no basis for awarding such costs, where, as here, the contracting agency did not act improperly and we deny the protest. TSCO, Inc., B-221306, Feb. 26, 1986, 86-1 CPD ¶ 198.

for 
Harry R. Van Cleve
General Counsel