



The Comptroller General
of the United States

Washington, D.C. 20548

CORER

Decision

Matter of: Bell & Howell Company--Reconsideration
File: B-224566.3
Date: January 29, 1987

DIGEST

1. Agency decision to resolicit after termination of a contract due to procurement irregularities, rather than to make an award under the original solicitation, is not objectionable where the agency intends to revise the specifications and evaluation plan.
2. Recovery of proposal preparation costs and the costs of pursuing a protest of a contract award that agency terminated while protest was pending is inappropriate when the protester will be afforded an opportunity to compete in a reprocurement.

DECISION

Bell & Howell Company requests that we reconsider our dismissal of its protest against the award of a contract to Datagraphix, Inc., under request for proposals (RFP) No. DAAC09-86-R-0331, issued by the Sacramento Army Depot, California, for a computer output microfilm system. We dismissed the protest as academic because the Army terminated the contract with Datagraphix before we could resolve the matter. The Army subsequently advised that deficiencies in the evaluation plan, specifications, and conduct of negotiations made any award under the RFP improper, and that the agency expects to resolicit, with a revised evaluation plan and specifications, when new funds have been acquired for the procurement. In requesting reconsideration, Bell & Howell argues that the Army should reinstate the original solicitation and award a contract to Bell & Howell.

We deny the request for reconsideration.

The solicitation, issued July 25, 1986, provided that the Army would evaluate proposals with regard to technical and price factors, and that the technical factor ("Factor 1") was

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more important than all other factors combined. The RFP, however, contained a typographical error, stating that "Factor 2 [price] is more important than Factor 1;" the sentence should have read: "Factor 1 is more important than Factor 2." The solicitation further stated that award would be based on best overall value to the government, with technical superiority being carefully considered. Technical factors were accorded a weight of 80 percent, compared to the 20 percent accorded price.

The Army received three proposals by the closing date, and after a technical evaluation, determined that all three, Bell & Howell, NCR and Datagraphix, were in the competitive range. Since Datagraphix's best and final offer was rated technically superior by a wide margin, the contracting officer determined that the slightly higher price for Datagraphix's product was justified by its technical superiority, and that Datagraphix's offer represented the best overall value to the government. Accordingly, the Army awarded a contract to Datagraphix on September 30.

Bell & Howell and NCR then protested to our Office, arguing that the Army's evaluation of their proposals was inconsistent with the evaluation factors specified in the RFP and patently incorrect, and that the Army failed to conduct meaningful negotiations with either firm.

During our consideration of the protests, the Army concluded that its evaluation of proposals had not been in accord with the evaluation scheme set forth in the solicitation. The Army therefore terminated the contract with Datagraphix on December 19, 1986, and we dismissed the protest. The Army later advised that it intends to revise the specifications and evaluation plan and issue a new solicitation.

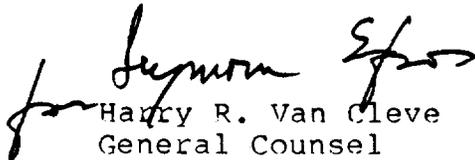
Bell & Howell argues in its request for reconsideration that resolicitation will not adequately protect its rights given the agency's prejudice in favor of Datagraphix and that, since the agency seemed to acknowledge by termination that Bell & Howell unreasonably was excluded from the procurement, the firm is entitled to award of the contract under the original solicitation.

We find no legal merit to Bell & Howell's argument. First, we will not presume that the Army will conduct the resolicitation unfairly. Second, the Army's action does not establish that Bell & Howell should receive the contract award. The reason the Army terminated Datagraphix's contract

(thereby, the Army advises, losing the fiscal year 1986 funds allocated to this procurement), was that the agency became aware, during the pendency of Bell & Howell's protest, of deficiencies in the specifications and the evaluation plan, and in the conduct of negotiations. The Army's decision to revise the solicitation specifications and evaluation provisions in these circumstances, and to resolicit when new funds become available, is consistent with prior decisions of this Office, see, e.g., Koehring Co., Speedstar Division, B-219667.2, 65 Comp. Gen. 268 (1986), 86-1 C.P.D. ¶ 135, and therefore we see no reason to object.

As an alternative to award, Bell & Howell requests proposal preparation costs and the costs of filing and pursuing its protest. The Competition in Contracting Act of 1984, 31 U.S.C. § 3554 (Supp. III 1986), and our Bid Protest Regulations, 4 C.F.R. § 21.6 (1985), provide authority for our Office to grant such costs where the claimant was unreasonably excluded from the procurement. Since Bell & Howell will be given an opportunity to compete for the entire contract effort when the Army resolicits, however, recovery of either proposal preparation or protest costs is inappropriate here. Koehring Co., Speedstar Division, B-219667.2, supra; Galveston Houston Co., B-219988.4, Nov. 4, 1985, 85-2 C.P.D. ¶ 519.

The request for reconsideration is denied.


Harry R. Van Cleve
General Counsel