



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Systematics General Corporation

File: B-224991

Date: February 20, 1987

### DIGEST

1. Protest that invitation for bids should be canceled and resolicited because the agency delayed 3 months before making an award and the low bidder refused to extend its bid is without merit where the other bidders were not prejudiced by the delay and award to the second-low bidder would meet the needs of the government at a reasonable price.
2. The desire of a bidder to lower its bid price after bid opening does not constitute a compelling reason that would justify cancellation of an invitation for bids and resolicitation.

### DECISION

Systematics General Corporation protests the award of a contract to Datasec Corporation under invitation for bids (IFB) No. DABT62-86-B-0021, issued by the United States Army Training and Doctrine Command, Fort Hood, Texas, for 18 TEMPEST approved video display terminals. Systematics contends that the contract should be terminated and the requirement readvertised because the Army failed to make award with reasonable promptness. In addition, Systematics independently lowered its price during the period of bid extension, and argues that the agency should have requested additional bids to take advantage of changes in the market.

We deny the protest.

The Army received 12 bids by the July 2, 1986 bid opening date. Because of a wide variation in bid prices, the Army was concerned that the offered products might not comply with the specifications. After investigation, the Army determined that five bids were responsive. This determination was reached shortly before expiration of the minimum 60-day bid acceptance period, and the Army asked the firms bidding

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acceptable products to extend their bid acceptance periods. Systematics responded with an offer to reduce its bid price, and after being told that this would not be acceptable, did not extend its fourth-low bid. The low bidder also did not extend its bid, and on September 24, the Army awarded a contract to Datasec, the second-low bidder.

Systematics argues that the Army could have determined the responsiveness of the bids in a short period, and that the delay in awarding a contract violated the Federal Acquisition Regulation (FAR) requirement that award be made with "reasonable promptness." 48 C.F.R. § 14.101(e) (1986). The protester contends that the delay limited competition since only two bids remained eligible for award (only the second-low and fifth-low bidders extended their acceptance periods). The protester also contends that the delay gave rise to a loss of confidentiality about the bids, resulting in the opportunity for "collusion" between the low bidder and other bidders. Faced with a 60 day delay, the protester argues, the agency should have recompeted the procurement to "insure competition and to take advantage of changes of the market, not the least of which was [its own] lower price."

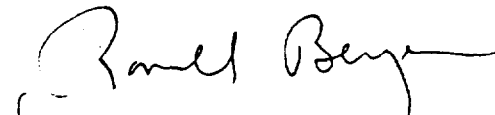
In order to preserve the integrity of the sealed bid system, the FAR requires that award be made to the lowest responsible bidder unless there is a "compelling reason to reject all bids and cancel the invitation." 48 C.F.R. § 14.404-1(a)(1). Generally, no compelling reason justifies cancellation when award under the IFB would meet the needs of the government without prejudice to the other bidders. See Energy Maintenance Corp., et al., 64 Comp. Gen. 425 (1985), 85-1 CPD ¶ 341; Pacific Coast Utilities Services, Inc., B-220394, Feb. 11, 1986, 86-1 CPD ¶ 150; FAR, 48 C.F.R. § 14.404-1(c). In our view, none of the issues raised by Systematics warrants cancellation of the IFB and resolicitation in this case.

Although the law, 10 U.S.C. § 2305(b)(3) (Supp. III 1985), and the implementing FAR provision require awards to be made with reasonable promptness, there is no requirement for the government to make an award within a bidder's initial bid acceptance period. It is generally within the contracting agency's discretion to request an extension in order to avoid the need for recompetition where administrative difficulties delay an award. FAR, 48 C.F.R. § 14.404-1(d); Boyd-Ferm, Inc., B-218081, Feb. 21, 1985, 85-1 CPD ¶ 222. Bidders are, of course, free to refuse such a request and to withdraw their bids. MEMM General, Inc., B-210939, May 31, 1983, 83-1 CPD ¶ 579.

Here, the Army's delay did result in the withdrawal of the low bid. In our view, this fact alone would not warrant cancellation of the IFB--there was no prejudice to the other bidders, and the Army found that the second-low bid would meet its needs at a reasonable price. As discussed above, Systematics complains that the delay also caused a loss of confidentiality and potential for collusion. Sealed bids are publicly opened and neither the identity of the bidders nor their bid prices are confidential. Also, the protester does not describe the nature of the potential "collusion" that it envisions, or how any collusion in this case might have prejudiced Systematics' competitive position. Consequently, we find no merit in these suggested justifications for a recompetition.

Finally, the possibility of obtaining a lower price from Systematics clearly would not justify reprourement. To do so would be tantamount to the conduct of an auction, in which a bidder, knowing the original prices of others, would have an opportunity to bid again for the identical items. We strictly construe the FAR prohibition against bid modifications after bid opening, including circumstances where, as here, a bidder seeks to condition extending its bid on the agency's acceptance of a lower price. See Milwaukee Valve Co., Inc., B-205937, June 14, 1982, 82-1 CPD ¶ 575. We do not consider Systematics' desire to lower its price to be a "compelling reason" to reject all bids and cancel the solicitation.

We deny the protest.

  
Harry R. Van Cleve  
General Counsel