



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: T.L. Furr Construction Company
File: B-226118
Date: May 6, 1987

DIGEST

1. When agency's inspection of a crewboat offered by the apparent low, responsive bidder reveals that it meets all minimum specifications, protester's allegation that the bid should be rejected because in 1985 the agency rejected its bid for a similar crewboat under similar specifications is without merit. Even if the protester's bid was improperly rejected, the government is not now estopped from accepting a responsible bidder's low, responsive bid.
2. Protest against allegedly improper rejection of a bid in a 1985 procurement, and protester's claim for damages resulting from that rejection, filed more than a year after the action, are untimely under our Bid Protest Regulations.

DECISION

T. L. Furr Construction Company protests award of a contract for the rental of a diesel powered boat for government survey crews under invitation for bids (IFB) No. DACW29-86-B-0162, issued October 2, 1986, by the New Orleans District, Army Corps of Engineers. Furr alleges that the "Miss Robbie," the crewboat offered by the awardee, did not satisfy the requirements of the IFB with regard to open deck space, horsepower, or speed.

We deny the protest.

The solicitation, a 100 percent small business set aside, contemplated the award of a contract at fixed prices for an estimated 588 8-hour days; an estimated 3,582 overtime hours (with not more than 6 additional hours per working day); and transport of the boat and its crew from its home port to the Corps facility and return. Along with prices for these services, bidders were required to provide the name and registration number of the proposed vessel.

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At bid opening on November 4, 1986, Miss Robbie, Inc., was the apparent low bidder with a total bid of \$298,704, followed by the protester at \$308,408.12. On November 14, in accord with the solicitation, the agency conducted an inspection of the "Miss Robbie" and determined that it exceeded the minimum requirements at issue here. The Corps therefore made the protested award on December 17.

Furr challenged the award, first to the agency and then to our Office, alleging that in 1985, under a similar solicitation, the Corps had rejected its offer for a crewboat similar to the "Miss Robbie;" the protester believes the Corps should also have rejected this bid. Furr seeks either award to itself or compensation for damages sustained because, following the 1985 rejection, it was required to acquire a larger and more expensive crewboat in order to participate in the current competition.

The minimum requirements at issue are 300 square feet of open deck space; 1,800 brake horsepower (BHP); and 22 miles an hour top speed with a load of 2,500 pounds and the fuel tanks filled to capacity. According to the Corps, its inspection of the "Miss Robbie" revealed that open deck space measured 31 feet by 14 feet, 4 inches for an area of approximately 444 square feet. The three 12-V71TI engines, equipped with N80 injectors, were each rated (by the Detroit Diesel rating table) at 613 BHP and 2,300 revolutions per minute, for a total of 1,839 BHP. In addition, the Corps states, during speed tests on the Mississippi River, the "Miss Robbie" averaged 22.6 miles an hour, loaded as specified.

Furr responds that during a visit to the "Miss Robbie" in November 1985, the captain informed it that the engines were outfitted with N70 injectors. Furr alleges that if this is the case, the "Miss Robbie" cannot produce the 1,800 BHP required by the solicitation. The protester concludes that the Corps has acted inconsistently and discriminated against it in accepting a bid for the same 12-V71TI engines from the awardee that it previously rejected when offered by Furr.

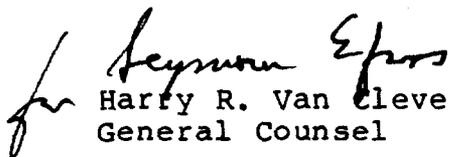
We find this argument without merit. Miss Robbie, Inc., took no exception to the solicitation requirements at issue here. Since it was not required to specify, in its bid, the amount of open deck space, BHP, or top speed, but only to identify the crewboat being offered, the low bid was on its face responsive. Furr's information as to the N70 rating of the "Miss Robbie" injectors no longer appears to be correct, since the Corps has provided an affidavit which indicates that at the time of inspection, the "Miss Robbie" engines were equipped with N80 injectors. The protester has offered no other evidence as to the awardee's alleged failure to

meet specifications except to refer to the Corps' rejection of its own bid under a similar solicitation in 1985.

That rejection is not relevant to the protest before us. Even if the Corps improperly rejected Furr's bid in 1985, it is not now estopped from accepting a responsible bidder's low, responsive bid, since it is required by law to do so. Federal Acquisition Regulation, 48 C.F.R. § 14.407-1(a) (1986); see generally Tri State Laundry Services, Inc., B-218042.2, Mar. 11, 1985, 85-1 CPD ¶ 295. Moreover, it is not entirely clear from the protester's submissions that the Corps' reasons for rejecting Furr's bid in the prior procurement also provide a reason for rejecting the awardee's bid in the current procurement. Documents dated August 14, 1985, indicate that the Corps questioned whether the "Nautilus Express" being offered by Furr at that time met open deck space requirements due to certain obstructions on the deck. The documents also indicate that the Corps could not verify whether Furr's crewboat met the 1,800 BHP requirement, because no permanent Coast Guard certificate, which the Corps would have accepted as evidence of available BHP, was on display during inspection.

To the extent that Furr is protesting its allegedly improper rejection in the 1985 procurement, its protest and its claim for damages are untimely under our Bid Protest Regulations, which require that protests be filed either within 10 days after the basis for them is known or should have been known or within 10 days of initial adverse agency action. 4 C.F.R. § 21.2 (1987); Jekyll Towing & Marine Services Corp., B-199199, Dec. 2, 1980, 80-2 CPD ¶ 413.

The protest is denied.


Harry R. Van Cleve
General Counsel