



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Kos Kam, Inc.

File: B-226495

Date: May 18, 1987

DIGEST

Construction contract was terminated for default, a new solicitation was issued, and that solicitation then was canceled when the original contractor's surety agreed to complete performance. When surety's contract subsequently was terminated for default also, agency acted reasonably in awarding procurement contract to the low bidder on the canceled solicitation, since the firm offered to complete the contract at its original bid price increased only on account of work needing to be redone and a wage rate revision, and price still was less than second low bid had been.

DECISION

Kos Kam, Inc., protests the award of contract No. N62472-87-C-0296 to Circle A Construction by the Department of the Navy to complete the construction of a barracks building at the Naval Weapons Station in Earle, New Jersey.

We deny the protest.

A contract to build the barracks first was awarded in March 1985, and required that performance be completed to meet ship arrivals scheduled for May 1987. That contract, however, was terminated for default on April 22, 1986. After the surety indicated it would not complete the work, the Navy issued an invitation for bids (IFB) and, on August 28, received bids of \$1,247,000 and \$1,280,000 from Circle A and Kos Kam, respectively. The Navy, however, rejected both bids and awarded the completion contract to the surety after the surety agreed to complete the contract for \$1,050,000. Subsequently, the Navy became aware that the surety would not complete the contract by May 1987, and on January 28, 1987, terminated the surety's contract for default.

038974

Because it was getting close to the May deadline, and the need for the barracks was becoming urgent, the Navy requested only Circle A, the low bidder on the competitive solicitation, to submit a price proposal to complete the work. Circle A offered to finish the project for \$1,266,000, a price which, according to the Navy, was more than Circle A's bid had been due to an increased Davis-Bacon Act wage determination and minor additions to the contract primarily resulting from some work having to be done over. The Navy determined Circle A's offer was reasonable and, on February 5, awarded the firm a contract.

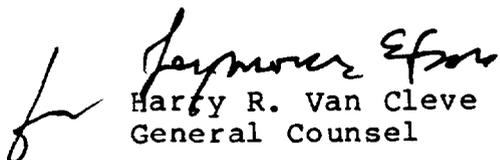
Kos Kam protests that since the contract with Circle A incorporates additional work and a revised wage determination, the Navy should have complied with the general requirement that government contracts be awarded on a competitive basis. Kos Kam further complains that the Navy at least should have requested a price proposal from Kos Kam.

There is no legal merit to the protest. Where a procurement is for the account of a defaulted contractor, the statutes and regulations governing regular federal procurements are not strictly applicable. TSCO, Inc., B-221306, Feb. 26, 1986, 86-1 C.P.D. ¶ 198. The regulations therefore provide that where the surety does not arrange for completing the defaulted contract the contracting agency may pursue any appropriate contracting procedure consistent with its obligation to use due diligence to obtain the lowest available price. Federal Acquisition Regulation (FAR), 48 C.F.R. § 49.405 (1986). We think award to the low qualified bidder under a solicitation for an initially contemplated replacement contract, at a price that is reasonable, is a proper method of completion. See VCA Corp.--Reconsideration, B-219305.3, Oct. 11, 1985, 85-2 C.P.D. ¶ 403. Further, we think it illogical to conclude that some minor deviations from or additions to the original contract work requirements are not permissible, especially where, as here, the additional work is needed because of unacceptable work by the defaulted contractor.

Here, 5 months after the surety's contract default, Circle A offered to complete the contract for \$1,266,000, \$19,000 more than its original bid and still \$14,000 less than Kos Kam's bid on the competitive solicitation, i.e., at a price that did not prejudice Kos Kam in that regard. Given the increased wage rate determination and the needed additions to the work, we have no basis to object to the Navy's

decision that this figure was reasonable. We thus conclude that the Navy acted reasonably in awarding the completion contract to Circle A.

The protest is denied.


Harry R. Van Cleve
General Counsel