The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Capital Hill Reporting, Inc.

File: B-230254; B-231363

Date: June 16, 1988

DIGEST

Where a contract is properly awarded to the low bidder under an invitation for bids (IFB), but subsequently is terminated for convenience because the agency and the awardee are unable to agree on contract requirements, there is no merit to the contention that the agency is required to reinstate the IFB and make award to the second low bidder.

DECISION

Capital Hill Reporting, Inc., protests the issuance of request for quotations (RFQ) No. 88-05, and the proposed issuance of invitation for bids (IFB) No. 88-18, by the Federal Communications Commission (FCC) for stenographic reporting and transcription services. Capital Hill, which was the second low bidder under an earlier solicitation for such services, IFB No. 88-07, contends that after the termination for convenience of the contract with the low bidder under that solicitation, Ann Riley and Associates, the FCC should have awarded a contract to Capital Hill, rather than resoliciting the requirement.1/ We deny the protests.

IFB 88-07 required bidders to submit prices per page for furnishing to the FCC estimated quantities of original typed pages of the records of FCC hearings. Separate prices also were required for additional copies ordered before or after transcription. The IFB provided further for sales of copies to the public as follows:

> "A. The Contractor agrees to sell copies of transcripts, or portions thereof to the Comm. respondent(s), . . . intervenors, parties to

1/ The RFQ was for services for a 3-month period following the termination of the contract with Riley; the proposed IFB is for the subsequent 12-month period.

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the proceedings and amici curiae and, in the case of public proceedings, to the general public. The Commission agrees that such sales shall be made under the conditions and at the prices hereinafter set forth in the Bid Schedule. The parties further agree that all copies sold to the Comm. must be of sufficiently high quality to enable the Comm. to reproduce them and distribute additional copies, or portions thereof, for its own use and as it deems necessary in the public interest.

"B. Pursuant to Public Law 92-463 [the Federal Advisory Committee Act], the Comm. reserves the right to make copies of transcripts available to the public at the actual cost of duplication as listed in the Comm. Fee Schedule. The Fee Schedule currently allows a duplication charge of $.10 per page. However, because of the Commission limited reproduction facilities and the greater speed with which the Contractor can reproduce copies it is contemplated that the Contractor will perform this function at a price which does not exceed the price to the Government for additional copies under Bid Schedule Items B1b and B1c and which also does not appreciably exceed the price established in the Comm. Fee Schedule for copies of Comm. documents."

The FCC received nine bids and made award to Riley after the contracting officer requested that Riley verify its bid of $27,618, which was substantially lower than the other bids and the government estimate of $100,000.

In the initial weeks of the contract, the FCC learned that Riley was charging the public for copies of transcripts prices far in excess of the prices charged the FCC. Since the FCC believed that the contract required that sales to the public be at prices set forth in the bid schedule for additional copies ordered by the agency, the agency requested Riley to revise its charges to comply with this requirement. Riley responded that its interpretation of the contract was that the public could obtain copies from the FCC at the price stated in the contract, but that copies obtained from the contractor must be purchased at whatever price the contractor established. The parties were unable to reach an agreement on this issue, and the FCC terminated Riley's contract for convenience citing defective specifications regarding prices to be charged the general public.

When the FCC issued RFQ 88-05 for an interim, 3-month stenographic services contract,2/ Capital Hill protested to our Office that it should have received award of the 12-month contract under the original IFB, and that the FCC should not have resolicited the requirement. The resolicitation created an auction, argues the protester, and the same result will occur, it says, under the proposed IFB, which the agency has not yet issued. The protester contends that the initial IFB clearly provided that prices charged the public must be the same as those charged the FCC and that the agency did not have a compelling reason for, in effect, canceling that solicitation.

Even if we were to agree with the protester that the initial solicitation was reasonably clear concerning the requirement to charge the same prices to both the FCC and the general public, there is no merit to the protester's contention that it is now entitled to an award under that solicitation. Assuming the IFB was clear and otherwise adequate for purposes of award, it appears from the record that award was properly made since Riley's bid took no exception to the requirements of the IFB, the bid was low, and the firm verified the bid when the possibility of a mistake was called to its attention. The fact that a dispute arising later between the contracting parties over contract terms caused the agency to terminate the contract does not mean that the agency is now required to reinstate the IFB and make award to the second low bidder. In short, there is no merit to Capital's argument that the agency is legally required to make award to it under initial IFB, absent some compelling reason not to do so.

The protests are denied.

for Seymour Efros

James F. Hinchman
General Counsel

2/ The agency revised the solicitation to read: "The Contractor is obligated to provide transcripts to third parties on whatever basis they are ordered. Third parties must be able to purchase copies at the same price the Government pays for additional copies." Capital Hill received the 3-month contract under the RFQ.