



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Teltara Inc.
File: B-245806
Date: January 30, 1992

Ralph B. Wahlberg, for the protester,
Herbert K. Kelley, Jr., Esq., and Maj. Bobby G. Henry, Jr.,
Department of the Army, for the agency.
Neill Martin-Rolsky, Esq., and Barbara Timmerman, Esq.,
Office of General Counsel, GAO, participated in the prepara-
tion of the decision.

DIGEST

1. Protester is an interested party to protest the adequacy of specifications of the invitation for bids, despite the presence of intervening bids, because the appropriate remedy (if the protest were sustained) would be resolicitation.

2. Protester alleged that agency created unfair competition by failing to inform other interested bidders that, although there was no applicable collective bargaining agreement (CBA), a union had previously gained the right to represent employees at the site where the services were to be performed under the prospective contract. Protest is denied because there is no applicable CBA, the agency told the protester to base its bid solely upon the terms of the invitation for bids, and the other bidders were required to ascertain for themselves and take into account any CBAs.

DECISION

Teltara Inc. alleges "unfair competition" in connection with the Army's procurement of "custodial" services for the Lyster Army Hospital, Fort Rucker, Alabama, for fiscal year 1992 (with options for fiscal years 1993-95) under invitation for bids No. DABT01-91-B-0086. Teltara believes that the Army should have informed all interested bidders that a union had gained the right to represent employees at the hospital.

We deny the protest.

The solicitation is a set-aside for disadvantaged small businesses. It was issued on August 16, 1991. Bid opening was set for September 16. Four days earlier, on August 12, 1991, Teltara, the incumbent contractor, received a letter

from the Laborers' International Union of North America. The union's letter stated that it represents the hospital's employees, and that it had a collective bargaining agreement (CBA) with Star Housekeeping, Inc., the company which preceded Teltara as the hospital's custodial contractor. The union asked for Teltara's "response," as "the successor to [the] collective bargaining agreement which is in place at Fort Rucker." According to Teltara, although it had been providing custodial services to Lyster Army Hospital for several years, this was the first time that it had been told that its employees were represented by a union. Teltara points out that the union's standing to represent the hospital's employees was not mentioned in the wage determinations included in either the current contract or the new solicitation.

On September 13, one month after it received the union's letter, Teltara asked the contracting officer to delay bid opening so that this matter could be investigated and resolved. The contracting officer told Teltara that the CBA did not apply and that no changes would be made to the solicitation. The contracting officer advised Teltara to base its bid solely upon the terms of the solicitation. However, that same day, the contracting officer issued an amendment to the solicitation postponing bid opening indefinitely in order to confirm her understanding of the situation with the Army's Labor Advisor.

The Labor Advisor concurred that the CBA between the union and Star Housekeeping had expired, that it had not been assigned, renewed, or otherwise implemented by Teltara, the employees, or the union, and that it did not apply to either the current contract or the new solicitation. To the Labor Advisor and the contracting officer, the union's letter suggested, at most, that the union might become active in the future. Based on the Labor Advisor's advice, the contracting officer determined that there was no need to modify the solicitation or otherwise inform the other bidders of the union's letter or the CBA and rescheduled bid opening for September 25, 1991. On the day of bid opening, 23 bids were received. Teltara was found to be the 12th lowest bidder.

On September 24, the day before bid opening, Teltara filed this protest. Teltara claims that the Army's failure to apprise all of the interested bidders of the union's right to represent the hospital's workers and the previous CBA with Star Housekeeping created "unfair competition." In Teltara's view, its knowledge of these facts competitively disadvantaged it vis-a-vis the other bidders.

The Army responds that Teltara was specifically instructed to base its bid, like its competitors, solely upon the

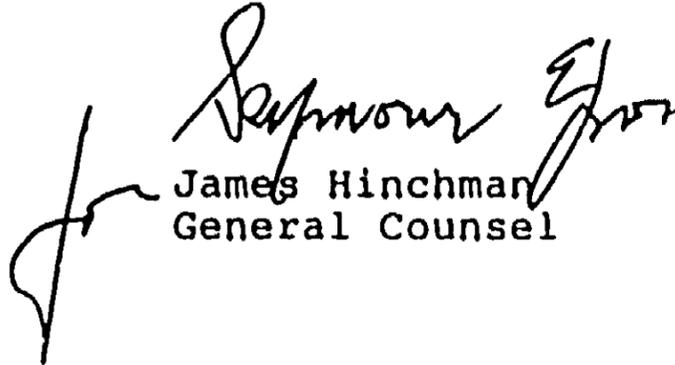
current wage determination included in the solicitation, and that Teltara chose to disregard those instructions. The Army also asserts that Teltara is not an "interested party" under the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556 (1988) or our Bid Protest Regulations, 4 C.F.R. § 21.0(a). The Army emphasizes that Teltara is the 12th lowest bidder and that, at the time of its report, there had been no challenge to the eligibility for award of the intervening bidders. Therefore, the Army argues, Teltara lacks the level of direct economic interest required to protest the agency's action since it would not be considered for award of the contract even if its protest were sustained.

Teltara submitted written comments on the Army's report on November 6, 1991. In those comments, Teltara admits that the CBA with Star Housekeeping had never been implemented or invoked by Star, the union, or the employees, and that it expired long ago; but Teltara blames the government for these facts. The protester continues to argue that the government had a duty to inform the bidders of the union's right to represent the hospital's employees, and that its failure to do so placed Teltara at a competitive disadvantage. In its comments on the agency report, Teltara argues, for the first time, that the eleven lower bids should be rejected because either their prices will not support the minimum costs needed to provide the services required or the companies which submitted them have not provided similar services previously.

Under the Competition in Contracting Act and our Bid Protest Regulations, as cited above, a protester must be an interested party before we will consider its protest. An interested party must have a direct economic interest in the award of the contract or a substantial prospect of receiving the award if the issues were resolved in its favor. Federal Information Technologies, Inc., B-240855, Sept. 20, 1990, 90-2 CPD ¶ 245; Aviation Systems Manufacturing, Inc.-- Recon., B-241180.2, Feb. 1, 1991, 91-1 CPD ¶ 104. The Army suggests Teltara is not an interested party because it did not timely challenge the eligibility for award of the 11 intervening bidders and would not be considered for award if its protest were successful. However, Teltara's protest goes to the adequacy of the specifications of the invitation for bids and is directly related to its bid price. If we were to decide this protest in Teltara's favor, the appropriate remedy would be resolicitation, under which Teltara could compete. Cf., Loral Fairchild Corp., B-241957, June 24, 1991, 91-1 CPD ¶ 594. Thus, we find Teltara is sufficiently interested to protest the agency's decision not to inform the other bidders of the union's letter and bargaining status.

Nevertheless, it is clear from the merits that Teltara's protest must be denied. It is agreed by the agency and the protester that neither the current nor the prospective contract are subject to collective bargaining agreements. Thus, there was nothing to inform the other bidders of. In any event, it is well-established that all prospective bidders are required to ascertain for themselves the details of any collective bargaining agreements and consider them when calculating their bids. E.g., Kime-Plus, Inc., B-229990, May 4, 1988, 88-1 CPD ¶ 436. Neither is this a case of the protester having been misled by the agency. Teltara was specifically told by the Army to base its bid solely upon the terms of the invitation for bids. Teltara chose to disregard those instructions. For these reasons, we cannot conclude that, as a matter of law, Teltara was competitively disadvantaged by the Army's actions in this procurement.

The protest is denied.



James Hinchman
General Counsel