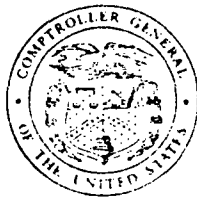


DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

40938

FILE: B-179914

DATE: July 16, 1974

95252

MATTER OF: AMF, Inc.

DIGEST: Protester's contention that prior decision treated Phase IV price controls as "other factors considered" is dismissed since IFB provided for evaluation on basis of Phase III regulations and Phase IV controls were not, therefore, a matter properly for consideration.

By letter of May 22, 1974, counsel for AMF, Inc., requested reconsideration of our decision B-179914, March 26, 1974, which denied AMF's protest against the making of an award to the Bendix Corporation under invitation for bids (IFB) F41608-73-B-1861, issued by the United States Air Force, San Antonio Air Materiel Area, Kelly Air Force Base, Texas.

AMF's request for reconsideration is premised upon the theory that the March 26 decision is an incorrect interpretation of 10 U.S.C. 2305(c) which provides in part:

"Awards shall be made * * * to the responsible bidder whose bid conforms to the invitation and will be the most advantageous to the United States, price and other factors considered."

Counsel for AMF contends that our March 26 decision treated the Phase IV price controls as coming within the "other factors considered" criterion of section 2305(c), when in fact Phase IV price controls should have been considered under the "price" criterion. Counsel further contends that since the price the Government would be required to pay under any resultant contract would be limited by the Phase IV controls, AMF's bid price should be evaluated at the resultant Phase IV ceiling price.

The referenced decision held, inter alia, that since Phase IV price controls did not come into existence until after bid opening and the IFB specifically provided that bid prices were to be in compliance with Phase III regulations, it would not have been proper to use Phase IV controls in evaluating bids. We do not interpret the decision as does counsel. In our opinion, the controlling of prices was not intended to disrupt the orderly process of Government procurement. This appears evident from the language in section B-25 of the IFB which specifically required

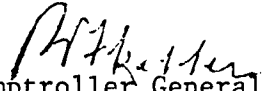
that bid prices be in compliance with section 130.13 of the Cost of Living Council's Phase III regulations. Further evidence of this intent can be obtained from an examination of the implementation of the Phase I order (Executive Order 11615) by the Department of Defense in Defense Procurement Circular No. 91 issued on August 20, 1971, and the supplements thereto, wherein it is stated that existing solicitation, evaluation, and award procedures remain unchanged.

As we stated in our decision B-173949, November 17, 1971,

"* * *award must be based upon evaluation of bids as submitted which constitute the only offers subject to acceptance by the Government. To depart from an award based upon the bids submitted would be to engage in the merest speculation as to what a particular offeror would have bid had he been aware of the limitations established by the Executive Order."

Therefore, possible Phase IV controls were neither a factor, nor for consideration, in any evaluation under the IFB. As Bendix was the low bidder under Phase III evaluation standards, award was properly made to it.

Therefore, since there has been no showing that the decision of March 26 was in error, either as a matter of fact or law, the referenced decision is affirmed.


'Deputy' Comptroller General
of the United States