

Proc I

DECISION



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

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FILE: B-193056

DATE: April 18, 1979

MATTER OF: Robinson Associates, Inc. -- [Claim for Bid
Preparation Costs]

DIGEST:

GAO dismissed protest against contracting agency's rejection of low bid as nonresponsive and award to second low bidder because material issues involved were before court of competent jurisdiction. Court subsequently determined that contracting agency's actions were not improper. Claim for bid preparation costs based on argument that agency's actions as described in protest and before court were arbitrary and capricious toward claimant is denied, since court determination is conclusive on propriety of such actions.

Request for technical proposals (RFTP) No. DAKF15-78-B-0010 was issued in January of 1978 by the Department of the Army as the first step of a two-step formally advertised procurement for the preparation of a "military option evaluation study of civilian males." The RFTP was modified several times prior to the issuance of the second step on September 1, invitation for bids (IFB) No. DAKF15-78-B-0010.

Robinson Associates, Inc. (Robinson), which had submitted an acceptable technical proposal, was the low bidder under the second step. However, Robinson's bid was rejected as nonresponsive because it was not based on the firm's acceptable technical proposal. Award was made to Chilton Company/Chilton Research Services (Chilton), the second low bidder.

Robinson filed a protest in our Office on October 2. Robinson contended that (1) the

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procurement was restricted to small businesses, and Chilton, a large business, therefore was ineligible for award; (2) Robinson's bid was in fact responsive; and (3) the Army improperly engaged in technical transfusion by amending the RFTP to incorporate various unique technical approaches proposed by Robinson.

On November 6, Robinson filed Civil Action No. 78-2104 in the United States District Court for the District of Columbia, requesting that the court direct the Army to terminate Chilton's contract and award a contract under the solicitation to Robinson. Robinson also requested that, pending a decision by the court, the court enjoin the Army from revoking a stop-work order that was issued under the contract shortly after Robinson's bid protest was filed, and from otherwise taking any action in furtherance of the contract. The grounds for the complaint were the same as those filed in support of Robinson's bid protest.

In view of our policy not to decide matters where the material issues involved are before a court of competent jurisdiction unless the court expresses an interest in receiving our decision, see section 20.10 of our Bid Protest Procedures, 4 C.F.R. part 20 (1978), we dismissed the protest. Robinson Associates, Inc., B-193056, November 24, 1978, 78-2 CPD 362.

By order of December 20, the court denied Robinson's requests.

Robinson has now filed a claim in our Office for reimbursement for the costs incurred in preparing its technical proposal and bid under the solicitation. The basis for the claim is that the Army's actions as described in Robinson's bid protest and Civil Action No. 78-2104 were unreasonable, and were arbitrary and capricious toward Robinson.

Regarding the effect the court's December 20 order may have on the claim, Robinson argues:

"* * * As that decision notes, the burden of proof which must be met by plaintiff contract bidder in order to convince the court to overturn a contract award and to interfere with the procurement process is extremely heavy. Robinson submits that in this situation the adverse ruling by the District Court should not have any effect upon the Comptroller General's review and ultimate decision concerning Robinson's entitlement to bid and proposal costs."


Robinson is evidently focusing on the following language in the order:

"* * * If the procurement decision has a rational basis, the court should stay its hand. Moreover, even if there is no rational basis for the procurement decision, there is room for sound judicial discretion in the presence of overriding public interest concerns, to refuse to entertain injunctive actions in the procurement context. * * * Accordingly, the plaintiff must overcome a heavy burden to prevail.

* * * * *

"* * * the plaintiffs have been unable to overcome their heavy burden to allow this Court to interfere with the procurement process. * * *"

However, the court specifically states in the order that it has found that (1) "the procurement was unrestricted and was not limited to small businesses;" (2) the Army's determination that Robinson's bid was not responsive was "supported by a rational basis;" and (3) "no innovative solutions developed by plaintiff [Robinson] were disclosed to other bidders." The order, as a full adjudication on the merits, is conclusive on these issues. 51 Comp. Gen. 37 (1971). Therefore, there is no basis on which Robinson's claim can be allowed. See Ikard Manufacturing Company, B-192248, September 22, 1978, 78-2 CPD 220.


Deputy Comptroller General
of the United States