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**DECISION**

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

10,286

FILE: B-193253.2

DATE: May 23, 1979

MATTER OF: North Star Electric Contracting Corp.

**DIGEST:**

Bidder alleging mistake in bid in solicitation subsequently cancelled because remaining bid is found to be unreasonably high, may not legally be prohibited from bidding on resolicitation of requirement, and agency's affirmative determination of responsibility of such bidder will not be reviewed by General Accounting Office, absent allegation of fraud or misapplication of definitive responsibility criteria, factors not present here.

North Star Electric Contracting Corporation (North Star) protests the award of a contract for certain construction work at the United States Military Academy, West Point, New York, to Wickham Contracting Company, Inc. (Wickham), under invitation for bids (IFB) No. DACA51-79-B-0016 issued by the Army Corps of Engineers.

This IFB is a resolicitation of the same requirement originally solicited under IFB No. DACA51-78-B-0046. Wickham was low bidder under the original solicitation; its bid of \$878,000 was 27 percent lower than the Government estimate of \$1,195,000, and 42 percent lower than the \$1,384,000 bid submitted by North Star, the only other bidder.

In response to a request by the Army for bid confirmation under the original IFB, Wickham claimed it had made a mistake of \$200,000 in its bid and requested that the bid be corrected to \$1,078,000. The Army determined that while Wickham had presented sufficient evidence to establish that a mistake in bid had been made, it had failed to provide clear and convincing evidence of its intended bid. Accordingly, pursuant to Defense Acquisition Regulation (DAR) 2-406.3 (1976 ed.), the Army denied Wickham's proposed correction, and instead authorized Wickham to withdraw its bid. Wickham declined to do so and protested the Army's determination to this Office. Subsequently the Army cancelled the solicitation because North Star's bid was 15 percent above the Government estimate and in excess of "the programmed amount" for the project.

The work solicited in the second IFB remained substantially the same. Seven bids were received; at bid opening Wickham was the apparent low bidder at \$1,126,000 and North Star was the apparent next low bidder at \$1,140,000. Wickham withdrew its protest when it discovered it was the low bidder on the second IFB, but North Star protested on the ground that Wickham should not have been permitted to bid on the resolicitation since its own claim of error permitted it to ascertain its competitor's prices and the amount of the Government estimate. North Star further asserted that Wickham's participation in the resolicitation was unfair and damaging to the integrity of the competitive bidding system.

The Army asserts that North Star's protest is without merit because the Government could not properly have prevented Wickham from bidding under the resolicitation, citing The Gerstenslager Company, B-192705, November 29, 1978, 78-2 CPD 375, in support of this proposition. We agree.

In Gerstenslager, our Office denied a protest directed at the cancellation of a solicitation and the award on resolicitation to the bidder which had previously been permitted to withdraw its mistaken low bid. In response to Gerstenslager's specific contention that the awardee was a nonresponsible bidder because it had submitted a mistaken bid on the initial solicitation, and therefore should not have been permitted to bid on the resolicitation, we stated that:

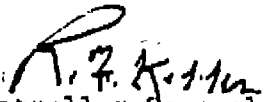
"We are aware of no legal basis which prohibits a mistaken bidder from re-bidding on a subsequent IFB. In this connection we note that even a contractor which has been terminated for default may bid on any resolicitation of the terminated contract work. See PRB Uniforms, Inc., 56 Comp. Gen. 976 (1977), 77-2 CPD 213."

North Star asserts that the instant case may be distinguished from Gerstenslager on the facts. North Star points out that the mistake in Gerstenslager was due to a bidder's misinterpretation of admittedly unclear Government specifications which were revised for the resolicitation. North Star also alleges that Wickham has a past history of making extremely low bids, followed by requests for bid correction after award, a factual situation which was not present in the Gerstenslager case. We find these distinctions to be without legal merit.

Here, the Army first determined that Wickham's bid was mistaken, and declined to allow correction. Subsequently, as a separate administrative action, the Army determined that because of the high price contained in the only other bid it was necessary to cancel and resolicit. As a result of this action, Wickham and North Star learned the amount of each other's bid, and the original Government estimate. Thus, neither obtained a competitive advantage as a result of this procedure.

Having resolicited the requirement, there was no legal basis on which the Army could have prohibited Wickham from bidding on the IFB. See Garstenslager, supra. However, the fact that a party cannot legally be prohibited from submitting a bid does not require a contract award to that party merely because it is the low bidder, since a prerequisite to any federal contract award is an affirmative finding that the prospective contractor is responsible, 10 U.S.C. 2305(c) (1976); DAR 1-902 (1976 ed.). In this instance, the contracting officer has found Wickham responsible, and it is the policy of our Office not to review protests concerning affirmative determinations of responsibility absent an allegation of fraud on the part of the contracting officer or misapplication of definitive responsibility criteria. Broken Lance Enterprises, Inc., B-193066, November 6, 1978, 78-2 CPD 328. Neither factor is present in this case.

The protest is denied.

  
Deputy Comptroller General  
of the United States