

DOCUMENT RESUME

03877 - [A2774008]

[Reconsideration of Protest against Cancellation of Invitation for Bids]. B-188771. September 29, 1977. 5 pp.

Decision re: Tennessee Valley Service Co.; by Robert F. Keller, Acting Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel; Procurement Law I.

Budget Function: National Defense: Department of Defense - Procurement & Contracts (058).

Organization Concerned: Department of the Army: Army Missile Materiel Readiness Command; Maintenance, Inc.

Authority: B-183695 (1975). B-172716 (1971). B-184294 (1976). 56 Comp. Gen. 364. 53 Comp. Gen. 586. 53 Comp. Gen. 591. 52 Comp. Gen. 285. 49 Comp. Gen. 211.

Reconsideration of a decision sustaining the objection of the protester to the cancellation of an invitation for bids was requested. The prior decision that the invitation should be reinstated and the award made on the basis of the total contract cost reflecting the estimated quantities was affirmed. Unit price bidders were not shown to have been prejudiced by such an award to override the damage to the competitive system caused by cancellation and readvertisement. (Author/SC)

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DECISION



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

FILE: B-188771

DATE: September 29, 1977

MATTER OF: Tennessee Valley Service Company--Reconsideration

DIGEST:

Prior decision that IFB canceled after bid opening be reinstated and award made thereunder on basis of total contract cost reflecting estimated quantities, notwithstanding that IFB award factor may have improperly limited bid evaluation to unit prices only, is affirmed. Unit price bidders have not been shown to have been prejudiced by such award to override damage to competitive system by cancellation and readvertisement.

Maintenance, Inc., requests reconsideration of our decision in Tennessee Valley Service Company, B-188771, July 20, 1977, 77-2 CPD 40, in which we sustained a protest by Tennessee Valley Service Company (TVS) against the cancellation of invitation for bids (IFB) No. DAAH03-77-B-0023 for moving services, issued by the United States Army Missile Materiel Readiness Command.

The solicitation's evaluation clause provided that "award will be made on the basis of the lowest aggregate bid for all items specified in the schedule, Section E-Paragraph E-1 * * *." Paragraph E-1 of section "E" listed four items by number and a "1" in the quantity column for each item and provided spaces for bidders to enter a unit (man-hour) price and an amount for each item. Paragraph E-2 of section "E" listed estimated quantities in hours for each item.

Four of the seven bidders responding to the IFB, including TVS, entered a unit price for each item and multiplied unit prices by applicable estimated quantities to yield "amount" entries. Two bidders entered only unit prices. Maintenance entered unit prices, repeated those prices as "amount" entries, and totaled the amount column. If the aggregate bid were determined by multiplying the unit prices by applicable estimated quantities, TVS would have been the low bidder. Maintenance would have been low if the unit prices were added together.

The Army determined that the evaluation clause in IFB -0023 was ambiguous because it was not clear which method of evaluation would be used, and canceled the solicitation. IFB -0030 was then issued

B-188771

for the same requirement, with an evaluation clause that clearly incorporated the estimated quantities in the "quantity" column of the bid schedule. TVS and Maintenance both protested the cancellation of IFB -0023, each contending that it was clearly entitled to award under the solicitation's evaluation criteria.

In our July 20 decision we stated, relying on Square Deal Trucking Co., Inc., B-183695, October 2, 1975, 75-2 CPD 206, that since the low bidder under any formally advertised procurement must be measured by the total work to be awarded:

"* * * the only proper way to evaluate the bids submitted here was to multiply unit prices by estimated quantities to determine the low bidder, in which case TVS would have been entitled to award if subsequently found responsible. In this connection, the fact that the estimated quantities are listed in paragraph E-2, although the evaluation clause refers only to paragraph E-1, would be irrelevant."

We further stated that, notwithstanding whether Maintenance's interpretation of the IFB's evaluation clause was reasonable:

"* * * we do not see how any bidder could be prejudiced by having the contracting officer multiply the unit prices by the applicable estimated quantities to determine the low bidder. * * *"

We therefore held that there was no cogent or compelling reason to allow the cancellation of IFB -0023 to stand, and that award should be made to TVS under that solicitation.

In requesting reconsideration, Maintenance argues in considerable detail that IFB -0023 clearly stated that bids would be evaluated on the basis under which Maintenance would have been entitled to award. However, as stated above, award to Maintenance under IFB -0023 would not be proper under any circumstances.

Maintenance also alleges that bidders that interpreted the evaluation clause, as Maintenance did, would have bid differently had they known that their bids would be evaluated by multiplying the

B-188771

unit prices by the estimated quantities and were, therefore, prejudiced by our July 20 decision. Maintenance has submitted affidavits from two other bidders on IFB -0023 to that effect. Maintenance argues that the cancellation of IFB -0023 is, therefore, the only equitable action possible.

In regard to any alleged prejudice, Maintenance states that upon receipt of IFB -0023 it noted the difference from previous similar solicitations in that estimated quantities were not entered in the "quantity" column of the bid schedule, or even in the paragraph referenced in the evaluation clause. On that basis, Maintenance states:

"* * * This told us that we should not heavily rely on any number of estimated hours, but that we should construct our bid in such a manner that each hour would support itself."

Maintenance therefore decided that it:

"* * * should expect a much lesser number of hours than the estimated quantities which were set forth in Paragraph E-2. * * * [Maintenance] had less confidence in the estimates because of the major changes in leaving the estimated manhours out of the Bid Schedule, and also deleting these from consideration in the Evaluation Clause."

Maintenance states that it then computed unit prices to (1) arrive at a total unit price less than the total submitted by TVS under the previous solicitation for similar services under which award had been made to TVS; and (2) "reflect consideration of high traffic and low traffic areas by bid item number."

Maintenance contends that had the estimated quantities been entered in the "quantity" column of paragraph E-1, it would have had more "confidence" in them and would have arrived at lower item prices, as evidenced by its bid on IFB -0030, under which it was the low bidder upon proper evaluation.

As indicated in our July 20 decision, the mere fact that there may have been a deficiency in the IFB is not, absent a showing of competitive prejudice, a "compelling reason" to cancel the solicitation and readvertise. See GAF Corporation; Minnesota Mining and Manufacturing

B-188771

Company, 53 Comp. Gen. 586, 391 (1974), 74-1 CPD 68. Rejection of all bids after opening tends to discourage competition because it publicly discloses bids without award, and causes bidders to have extended manpower and money in bid preparation without the possibility of acceptance. 52 Comp. Gen. 285 (1972). Moreover, cancellation after bid opening is generally inappropriate if award under the IFB would serve the actual needs of the Government. 53 Comp. Gen. 586, supra; 49 Comp. Gen. 211 (1969).

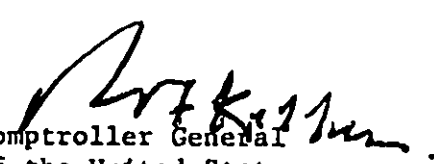
We recommended reinstatement of IFB -0023 because we could determine no prejudice to bidders by properly evaluating bids submitted thereunder, notwithstanding whether the solicitation's evaluation clause may have been ambiguous. We do not believe that Maintenance has demonstrated prejudice by the award of a contract to TVS to overcome the damage to the system if the solicitation were canceled after bids had been publicly exposed.

Concerning the preparation of Maintenance's bid, Maintenance admits that it took the estimated quantities in paragraph E-2 into consideration in calculating a unit price for each item in the bid schedule. We do not see how Maintenance could reasonably have had less "confidence" in the estimated quantities, merely because their location differed from that in other similar solicitations, particularly in view of the established rule of formal advertising that bids are to be evaluated on the basis of estimated quantities set out in an IFB and that a contract shall be awarded to that bidder whose bid is low when so evaluated. See B-172716, November 18, 1971. We note here that at least four bidders demonstrated "confidence" in the estimated quantities. Moreover, the estimated quantities in IFB -0023 were specifically described as "the best estimate available of quantities to be required during the term of this agreement * * *" (Emphasis added.); they were identified by the item numbers in paragraph E-1, and they appeared on the bid schedule directly below paragraph E-1, albeit in paragraph E-2; and as Maintenance points out, award under other similar solicitations, including those at the same location, had always been to the low bidder as determined by extending unit prices by the estimated quantities. On those bases, we believe it unreasonable for a bidder to have considered the estimated quantities of lesser consequence than if they had appeared in the "quantity" column. Further, we see no basis for Maintenance to have assumed that a lesser rather than an increased number of hours should be expected, and to therefore arrive at unit prices greater than it would otherwise bid.

B-188771

Concerning the affidavits submitted from two other bidders on IFB -0023 to the effect that their bids would have been "different" had the estimated quantities appeared in the "quantity" column of the bid schedule, we do not consider those statements persuasive, particularly since the two bidders had entered only unit prices, and had neither totaled them nor repeated them in the "amount" column, as had Maintenance. Although we note that one of these bidders submitted a lower "extended" total bid on IFB -0030 than on IFB -0023 (the other did not bid on the resolicitation), so did a bidder that had extended its unit prices on IFB -0023. In any case, we will not conjecture as to the cause of the lowering of bid prices under the resolicitation, other than to recognize that bids under IFB -0023 had been exposed. See Santa Fe Engineers, Inc. - Request for Reconsideration, B-184284, July 22, 1976, 76-2 CPD 67.

Accordingly, we are not persuaded that any bidder could reasonably have bid on IFB -0023 without appropriate regard for the estimated quantities which, regardless of how the evaluation was to be performed, represented the Government's requirements. Distinguish Engineering Research, Inc., 56 Comp. Gen. 364 (1977), 77-1 CPD 106. We believe that the alleged detrimental effect on Maintenance in so evaluating bids on IFB -0023 to award to TVS, which would clearly serve the Government's needs, was the result of business judgment, and is clearly overridden by the prejudice to the integrity of the competitive bidding system that cancellation of IFB -0023 would cause. Our decision of July 20 is, therefore, affirmed.


Acting Comptroller General
of the United States