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DECISION

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

FILE: B-201738 DATE: May 26, 1981

MATTER OF: Pioneer Recovery Systems, Inc.

DIGEST:

1. Agency action which precludes potential bidder from competing does not require cancellation and resolicitation where no conscious or deliberate attempt was made to preclude bidder from competing, significant effort was made to obtain competition, and award is made at reasonable price.

2. Agency determination that bid price was reasonable will not be questioned unless protester shows that determination was unreasonable or there was fraud or bad faith on part of contracting agency.

3. Absent showing of prejudice, mere existence of technical deficiencies in solicitation does not provide compelling reason to cancel and readvertise procurement.

Pioneer Recovery Systems, Inc. (PRS) protests any award of a contract for parachute canopies under invitation for bids No. N00383-81-B-0058 issued by the Navy Aviation Supply Office, Philadelphia. The basis of the protest is the Navy's failure to send PRS a copy of the solicitation, thereby depriving PRS of an opportunity to compete. Bids have been opened but no award has been made. We deny the protest.

The protester learned of the intended acquisition through a Commerce Business Daily (CBD) synopsis which erroneously listed the procurement as a small business set-aside. The protester, a large business whose canopy is included on the Qualified Products List (QPL), protested the small business restriction to the Navy as being inconsistent with Defense Acquisition Regulation (DAR) § 1-706.1(j)(iii) (1976 ed.) which prohibits a

[Protest of Navy's Failure To Provide A Copy of Solicitation]

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total set-aside when one or more large businesses are on the QPL unless it has been confirmed that none of them desires to compete. The buyer advised PRS that the acquisition was only intended to be partially set-aside (50 percent) and that PRS would therefore be eligible to compete.

However, the Navy neglected to send a bid package to PRS because the buyer in preparing the list of potential sources used the list of potential sources from a previously canceled procurement which was erroneously set aside for small business. The buyer erroneously assumed that since PRS was on the QPL it was also on the list of potential sources. Therefore, while the Navy mailed bid packages to five firms on the list and 17 other firms which requested them it did not send a bid package to PRS. Bid opening occurred on December 22, 1980, and PRS filed its protest on January 9, 1981.

Cancellation of the solicitation is not required where it is shown that there was no conscious or deliberate attempt to preclude any potential bidder from competing, that a significant effort was made to obtain competition, and that the award will be made at a reasonable price. Check Mate Industries, Inc., B-194612, June 12, 1979, 79-1 CPD 413. Thus, if a potential bidder is not excluded from the competition by design, the propriety of a particular procurement is viewed in terms of the adequacy of competition and reasonableness of price.

Here there is no evidence that the Navy made a conscious or deliberate attempt to exclude PRS or that a significant effort was not made to obtain competition. In addition, the Navy has concluded that the low bidder offered a reasonable price. In this connection, PRS suggests that the low bidder's price is unreasonable since that price is slightly higher than the prices in a previous acquisition of the same materials for a significantly smaller quantity. However, a determination as to whether a bid price is reasonable is a matter of administrative discretion often involving the exercise of sound business judgment which our Office will not question unless the protester shows that the determination was unreasonable or that there was fraud or bad faith on the part of the agency. See Honolulu Disposal Service, Inc., B-200753, March 13, 1981, 60 Comp. Gen. ____, 81-1 CPD 193. Since the slight increase in price could well be attributed to inflation, we do not believe that the agency's determination has been shown to be unreasonable. See Honolulu Disposal Service, Inc., supra.

The Navy, in its report, also indicated that it discovered some minor deficiencies in the IFB which it views as not material. For example, the procurement was advertised in accordance with revision M of the parachute assembly drawing, when in fact revision N was in existence. According to the Navy, revision N was issued to correct a drawing error involving the method of attaching four of the 28 suspension lines to the parachute canopy. Revision M did not require the use of a clove hitch and half hitch knot for four of the 28 lines before stitching. Revision N corrected that error so that all 28 lines would be knotted as required. We agree with the Navy that the requirement to knot four additional suspension lines would have a negligible impact on cost, since the labor involved does not appear to be significant.

The other deficiencies appear to be even more innocuous. For example, the low bidder failed to acknowledge Amendment 3 to the IFB. Amendment 3 deleted an inapplicable drawing for a pouch designed to contain the external pilot chute - an item which was not a part of the canopy assembly and therefore not a part of this procurement. In other words, the deleted drawing had no bearing on the item being procured since it was a part of another parachute pack assembly which was not the subject of the procurement.

Finally, the Navy did not specifically identify the set-aside portions of the IFB which were restricted to small business firms. The IFB did, however, contain the standard "Notice of Partial Small Business Set-Aside" and also clearly advised bidders that the IFB was a 50 percent set-aside for small bidders. None of the bidders appears to have been misled; all bid according to set-aside procedures; and none of them has complained that this or any of the other deficiencies prejudiced the competition in any manner. We therefore find no basis to recommend cancellation of the IFB and resolicitation, since the mere existence of tehnical deficiencies in an IFB, absent a showing of prejudice, does not provide a compelling reason to do so. S. Livingston & Son, Inc., B-193613, March 5, 1979, 79-1 CPD 147.

The protest is denied.

Milton J. Socolar

Acting Comptroller General
of the United States