The Comptroller General
of the United States

Washington, D.C. 20548

Ashen

Decision

Matter of: Allied Trailer Sales & Rentals

File: B-224816.2

Date: November 5, 1986

DIGEST

Protest alleging that termination of a contract because the award was based upon an improper evaluation factor will result in hardship to it is dismissed where the contractor does not allege that the initial award in fact was proper or that the corrective action is insufficient to protect the integrity of the competitive procurement system.

DECISION

Allied Trailer Sales & Rentals protests the decision of the Defense Logistics Agency to terminate for convenience a contract for the rental of trailers awarded to Allied under invitation for bids No. DLA600-86-B-0029. The agency plans to resolicit the requirement. We dismiss the protest.

The solicitation required the contractor to install the trailers at Cameron Station in Alexandria, Virginia, leveling and anchoring them in accord with applicable state and local codes, and to provide a minimum 18-inch crawl space beneath the trailers. As amended, the solicitation further provided that for purposes of evaluation, "a predetermined amount that reflects the government's direct and indirect moving expenses" would be added to the bid price for the lease and installation of the trailers if the currently-installed trailers were not offered. The solicitation provided for a contract with a base period of 1 year, with the government having the option to extend the contract for 4 additional years.

International Shelter Systems, Inc. protested to our Office shortly after learning that award was to be made to Allied, the incumbent contractor. International alleged, among other things, that (1) approximately half of Allied's currently-installed trailers had only an 8-inch crawl space, thereby failing to meet both the solicitation requirement and a

requirement in the state building code for an 18-inch crawl space; (2) the "predetermined amount" to be added to bids to reflect the government's moving expenses had not been calculated until after bid opening; and (3) this amount was grossly inflated, so as to displace International's otherwise low bid.

International withdrew its protest when the agency agreed to terminate Allied's new contract and resolicit. The agency advises us that it agrees with the protester that it had not correctly calculated the cost to the government of an award based on other than the currently-installed trailers, and thus had improperly evaluated International's low bid.

Allied now protests the agency decision to terminate its contract and resolicit. Allied argues that issuing a new solicitation after its bid price has been exposed will give its competitors an unfair advantage. Moreover, it states that, acting in good faith, it expended considerable time and expense in preparing its offer, which was based on the solicitation provision for a minimum contract term of 1 year.

Our Office generally will not review a contracting agency's decision to terminate a contract for convenience, since the matter is one of contract administration that must be considered by either a contract appeals board or a court of competent jurisdiction. Laclede Chain Mfg. Co., B-221880.2, May 5, 1986, 86-1 CPD ¶ 432. Where, however, the decision to terminate is the result of an agency's finding that the initial award was improper, we will review the protest to examine the award procedures that underlie the termination. The scope of our review is limited to determining whether the initial award was improper and, if so, whether the corrective action taken is sufficient to protect the integrity of the competitive procurement system. Id.

Allied does not contend that the trailers it offered provided the required 18-inch crawl space, and it does not defend the application of the evaluation factor for moving expenses or otherwise argue that the award to it was proper. Rather, Allied merely alleges that resolicitation would be unfair and that it would suffer hardship from the loss of the time and money invested in preparing its bid and from performing for less than a year at a price based upon a contract term of at least a year.

Since Allied does not dispute the agency's finding that award was improper, we see no basis on which to object to the decision to terminate Allied's contract. In any case, it is

normally appropriate for the government to protect the integrity of the competitive system by terminating an improper award. See O.K. Tool & Die Co., B-219806, Oct. 9, 1985, 85-2 CPD ¶398. Moreover, we have specifically rejected the contention that a contractor that acted in good faith and did not itself induce any error cannot be subject to corrective action because it might suffer hardship as a result of such action. See Leland & Melvin Hopp, Partners--Reconsideration, B-211128.2, Oct. 16, 1984, 84-2 CPD ¶ 410; cf. Charta, Inc.--Reconsideration, B-208670.2 et al, July 12, 1983, 83-2 CPD ¶ 79 (contractor's prices based upon understanding that good performance would result in exercise of option years).

The protest is dismissed.

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