



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Sonic, Inc.

File: B-225462.2

Date: May 21, 1987

DIGEST

1. Cancellation of invitation for bids after contract with third low bidder has been terminated and second low bidder has been advised that solicitation will be reinstated and it will receive award is proper where agency no longer requires the supplies.
2. Claim for bid protest costs is denied where protester withdrew initial protest and subsequent protest is denied.

DECISION

Sonic, Inc. protests the failure of the Defense Industrial Supply Center (DISC) to award it a contract for 1,122,000 flat washers under invitation for bids (IFB) No. DLA500-86-B-1266. Sonic requests that it be awarded the contract as the low responsive bidder. In the alternative, Sonic claims its bid protest costs, including attorney's fees, and expected profits. We deny the protest and the claim for costs.

Sonic's bid was the second lowest of the 16 received in response to the IFB. The low bidder was rejected as nonresponsive. Sonic's bid was then rejected as nonresponsive because that firm failed to furnish in its bid the name and address of the manufacturing facility where the supplies which it offered were to be produced. On October 16, 1986, the agency awarded a contract to the third low bidder, Ohio Gasket and Shim Co.

Sonic protested the rejection of its bid to our Office. Although maintaining that the rejection of Sonic's bid was proper, the agency decided "in the best interest of the competitive bidding system" to terminate for convenience the contract with Ohio Gasket and to make award to Sonic. The agency ordered Ohio Gasket to stop work on November 18. On December 2, the agency advised Sonic's attorney that termination procedures had been initiated and that, upon

completion, award would be made to Sonic. By letter of that date Sonic withdrew its protest to our Office.

On December 22, while the agency was processing the termination, however, the commodity manager notified the contracting office that the supplies were no longer needed. On February 16, the agency informed Sonic that the contract with Ohio Gasket had been terminated, but that the washers were no longer needed and therefore no award would be made to Sonic. Sonic then filed the instant protest.

Sonic argues that the agency does have a need for the washers, and that the agency's refusal to award it a contract amounts to a bad faith refusal to carry out its part of the agreement which resulted in Sonic's withdrawing its protest. The agency says that it does not need all of the washers solicited by the IFB. According to an agency study,^{1/} it will have an excess of 246,234 washers if it acquires the entire quantity solicited. While the agency does intend to issue a solicitation for washers sometime this year, it has decided not to procure them under the subject solicitation. On the other hand, the protester says that the study shows that after the acquisition of 1,122,000 washers, the agency will be short 333,976 washers for the -- years 1989-1990.

While the conclusions of the study are not completely clear from its face, we understand, based on an informal explanation by the agency, that the "shortage" of 333,976 washers does not represent a shortage in the number of washers required to satisfy DISC's current needs, but rather represents the additional number of washers that DISC projects would be required to support a mobilization. With respect to its current needs, the agency report that there is a need for a lesser quantity than specified in the subject IFB, but the solicitation does not provide for award of a lesser quantity than specified. Since no award can be made under this solicitation for the lesser quantity, a new solicitation will be issued.

Accordingly, we do not think that the study shows that the agency has a current need for the total quantities solicited. It is proper for an agency to cancel a solicitation after bid opening where the agency determines either that the items solicited are no longer needed, R.H.G. Systems, Inc., B-224176, Oct. 2, 1986, 86-2 CPD ¶ 380, or

1/ The agency "study," DLA form 690, consists of a chart listing demand history, requirements, assets and recommendations in a short-hand manner without much explanation.


the need for those items is significantly less than stated in the solicitation. Manufacturing Sciences Corp., B-220567, Dec. 24, 1985, 85-2 CPD ¶ 712. The fact that the agency may later need to issue a solicitation for these items does not invalidate the decision not to make a current award.

Further, the agency denies Sonic's allegation that its contracting personnel knew that the solicitation would be canceled at the time they advised Sonic that it would receive an award and asked that firm to withdraw its protest. In any event, it does not appear that Sonic relied to its detriment on the agency's assurance that it would receive an award. Although it did withdraw its initial protest based upon the agency's representations, we do not see that it suffered any detriment as a result since our Office would have dismissed the protest as academic once the solicitation had been canceled. James M. Carroll-- Reconsideration, B-221502.3, Mar. 24, 1986, 86-1 CPD ¶ 290.

Finally, Sonic claims its costs of filing and pursuing both of its bid protests, including attorney's fees, and its expected profits.

A protester is entitled to the reasonable costs of filing and pursuing its protest, including attorney's fees, only where our Office determines that a solicitation, proposed award, or award does not comply with a statute or regulation. 31 U.S.C. § 3554(c)(1) (Supp. III 1985); Bid Protest Regulations, 4 C.F.R. § 21.6(d)(1) (1986). Our Office did not make such a determination with respect to Sonic's first protest since it was withdrawn (and would have been dismissed as academic shortly thereafter had it not been.) See Monarch Painting Corporation, B-220666.3, Apr. 23, 1986, 86-1 CPD ¶ 396. Nor did we make such a determination with respect to Sonic's current protest since we find that the cancellation of the solicitation was proper and there is no indication that the IFB was originally issued in bad faith. See Cellular Product Service, Inc., B-222614, July 3, 1986, 86-2 CPD ¶ 32. We therefore deny Sonic's claim for bid protest costs. We also deny Sonic's claim for lost profits since we do not permit the recovery of anticipated profits even in the presence of wrongful action. Smoke Busters, B-219458, Nov. 1, 1985, 85-2 CPD ¶ 501.

The protest and the claims are denied.

for 
Harry R. Van Cleve
General Counsel