



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Republic Maintenance of Ky., Inc.

File: B-226991

Date: June 2, 1987

DIGEST

1. Assuming, as protester contends, that contracting agency directed protester to discharge specific employee as a condition of receiving prior contract because of pending criminal investigation involving the employee, once protester became aware that investigation had been completed without charges being filed, it no longer was reasonable to assume that it was precluded from rehiring the employee in connection with following year's contract for the same services where there is no indication that contracting agency ever advised protester that alleged prohibition on hiring the employee extended to subsequent procurements.

2. Contention that awardee obtained unfair competitive advantage in preparing its bid by virtue of employing protester's former employee involves dispute between private parties which does not provide a basis for bid protest.

DECISION

Republic Maintenance of Ky., Inc. protests the award of a contract to Larry J. Robinson & Co., Inc. under invitation for bids (IFB) No. DABT23-87-B-0021, issued by the Army for interior painting, floor refinishing, plaster repair and wallboard installation in family housing areas in Fort Knox, Kentucky.

Three bids were received at bid opening under the IFB on March 20, 1987. The low bid (\$1,292,638) was submitted by Larry J. Robinson & Co., Inc. The protester submitted the second low bid (\$1,347,450). Award was made to Robinson on March 31.

According to Republic, it was the incumbent contractor for the services called for under the IFB for the past 3 years. In connection with the contract awarded in April 1986, Republic maintains that it was directed by the Army to discharge the employee who had acted as superintendent under Republic's two prior contracts in order to receive the 1986

award. Republic states that the discharged employee later was hired as a superintendent by Robinson, the awardee under the IFB now at issue. Republic argues that (1) Robinson had an unfair advantage under the current IFB as a result of hiring Republic's former employee, who was familiar with Republic's pricing; and (2) as a result of the Army's direction that it discharge its superintendent, Republic lost the benefit of his expertise and had to hire a new superintendent unfamiliar with the contract, thereby increasing its costs and thus its bid.

Republic's initial protest submission stated only that "Government procurement people" told Republic to discharge its superintendent as a condition of the 1986 contract award. In reply to this general allegation, the Army stated that the contracting officer interviewed all the contracting personnel normally involved in construction contracts, all of whom denied telling Republic to discharge its employee. Republic did not identify the specific individual who allegedly issued the direction until its comments on the Army report. In those comments, Republic stated that during a meeting in April 1986 to discuss ongoing work under Republic's other contracts at Fort Knox, a member of the Army's legal staff advised Republic that the superintendent's discharge was a condition of the 1986 award; two other Army representatives present at the meeting, identified generally as contracting officers, are said to have remained silent.

By failing to identify in its original submission the individual who allegedly made the statement Republic relies on, Republic deprived the Army of a fair opportunity to respond to the allegation. In any event, even if Republic understood the Army to be requiring the superintendent's discharge as a condition of the 1986 award, it was not reasonable in our view for Republic to assume that it was precluded from employing the superintendent in connection with the following year's procurement.

According to Republic, the Army directed the superintendent's discharge in April 1986 because of an ongoing Army investigation into alleged criminal wrongdoing by the superintendent. In a letter to the Army dated July 10, 1986, however, Republic expressed interest in rehiring the superintendent, stating that it had been informed that the criminal investigation had been completed without any charges being filed. Once Republic knew that the investigation which formed the basis of the Army's decision to direct the superintendent's discharge was completed, it no longer was reasonable for Republic to assume that the alleged prohibition on employing him was

still in effect. In fact, in the absence of a specific reason such as an ongoing criminal investigation, it would have been unreasonable for the Army to object to his employment. Further, Republic does not contend that the Army ever indicated that the prohibition allegedly imposed in connection with the 1986 contract would apply to subsequent procurements; in this regard, the Army's only reply to Republic's July 10 letter regarding rehiring the superintendent was a letter dated July 14 merely acknowledging receipt of the letter.

Finally, Republic has not shown convincingly how it was prejudiced by its failure to employ the superintendent. Republic states that he was a valuable employee with considerable experience in the services called for by the IFB and was instrumental in allowing Republic to submit the lowest bids for the three prior contracts. Republic also claims that it incurred costs in training a new supervisor. Other than these general statements, however, Republic has not attempted to demonstrate how the superintendent's participation would have allowed Republic to reduce its bid enough to displace the awardee as low bidder.^{1/}

To the extent Republic contends that the awardee had improper access to its pricing information by virtue of hiring Republic's former superintendent, the issue concerns a dispute regarding business practices between private parties which does not provide a basis for protest to our Office. Radio TV Reports, Inc., B-224173, Sept. 24, 1986, 86-2 CPD ¶ 344.

The protest is denied.

for 
Harry R. Van Cleve
General Counsel

^{1/}Republic's bid (\$1,347,450) was approximately \$55,000 higher than the awardee's (\$1,292,638).