



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: River Salvage, Inc.

File: B-228896

Date: December 15, 1987

DIGEST

1. General Accounting Office has jurisdiction to consider a protest of an award of a contract, the cost of which will be reimbursed by a local urban renewal authority, because the protest concerns the procurement for property or services by a federal agency.

2. Where protester argues that award to a bidder, who may own sunken barges slated for removal, violates statute which allows recovery of removal costs from vessel owner, the protest is denied since statute is intended to allow the United States to recover funds it expended and here all costs will be reimbursed by local urban renewal authority.

DECISION

River Salvage, Inc., protests potential award of a contract to Marine Contractors, Inc. (MCI), under invitation for bids (IFB) No. DACW59-87-B-0051, a total small business set-aside, issued by the United States Army Corps of Engineers (Corps), for the removal of approximately 20 abandoned sunken barges. River Salvage contends that award to MCI would be improper because MCI allegedly owns some of the barges and such award would violate 33 U.S.C.A. § 414(b) (West Supp. 1987), which makes the owner responsible for removal costs.

We deny the protest.

The Corps is conducting this procurement at the request of the Urban Redevelopment Authority of Pittsburgh (URA). Because it lacked expertise in barge removal, in August 1986, the URA sought the Corps' assistance in removing 20 sunken barges located in the Allegheny River just south of Herrs Island, as part of a redevelopment effort. The URA has agreed to reimburse the Corps for all costs associated with the procurement for which the IFB was issued on June 5, 1987.

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At bid opening on July 7, 1987, the Corps received three bids in response to the IFB. MCI was the apparent low bidder and River Salvage was the second low bidder. By letter of July 13, 1987, River Salvage advised the Corps that the president of MCI, Harry Zubik, allegedly is the owner of 13 of the approximately 20 barges slated for removal under the IFB, which makes MCI ineligible for the award under the above cited statute. Award to MCI has been withheld pending a decision on the protest.

River Salvage argues that award to MCI would violate the Rivers and Harbors Appropriation Act of 1899, as amended, 33 U.S.C.A. § 414, because a 1977 "Bill of Sale" establishes that MCI owns 13 of the barges that are listed in the IFB. River Salvage contends that the statute places the cost for the removal of the barges on the owner, MCI, not the Corps. Therefore, River Salvage argues that it would be unfair to permit MCI to compete because as the owner of the barges it enjoys a competitive advantage over the other bidders.

Initially, the Corps contends that our Office lacks jurisdiction over this protest because the Competition in Contracting Act of 1984 (CICA) only authorizes our Office to decide protests concerning alleged violations of procurement statutes or regulations, and no such violation has been alleged here. See 31 U.S.C. § 3552 (Supp. III 1985). However, we do not interpret CICA so narrowly. Our bid protest jurisdiction under CICA is based on whether the protest concerns a procurement for property or services by a federal agency. Solano Garbage Co., B-225397, Feb. 5, 1987, 66 Comp. Gen. _____, 87-1 C.P.D. ¶ 125. In addition, while not specifically involving an alleged violation of a procurement statute or regulation, the protest requires us to decide whether MCI is prevented from receiving the award by 33 U.S.C.A. § 414. We consider this a sufficient basis for exercising our CICA jurisdiction.

The pertinent statute, 33 U.S.C.A. § 414(a), authorizes the Secretary of the Army (Corps of Engineers) to move any obstruction to the navigable waters of the United States which has existed for more than 30 days. Section (b) of the statute states:

"(b) Liability of owner, lessee, or operator

The owner, lessee, or operator of such vessel, boat, water craft, raft, or other obstruction as described in this section shall be liable to the United States for the cost of removal or destruction and disposal as described which exceeds the costs recovered under subsection (a) of this section. Any amount recovered

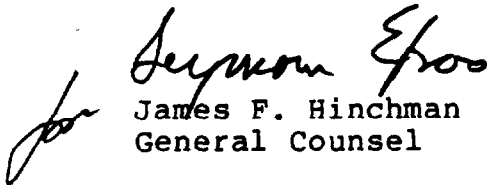
from the owner, lessee, or operator of such vessel pursuant to this subsection to recover costs in excess of the proceeds from the sale or disposition of such vessel shall be deposited in the general fund of the Treasury of the United States."

The Corps reports that in response to River Salvage's allegation, MCI denied owning any of the barges listed in the IFB. Further, the Corps states that a review of the 1977 bill of sale for 13 barges to Harry Zubik does not conclusively establish that MCI owns any of the barges that are presently slated for removal.

We find the issue of the ownership of the barges to be irrelevant to the deposition of this matter. Section (b) of the statute permits the United States to recover from the owner of a vessel its cost of removal and for any recovery to be deposited in the Treasury of the United States. Here, however, the URA will reimburse the Corps for all expenses. Therefore, 33 U.S.C.A. § 414(b) does not apply since no federal funds will be utilized in the clearing of the waterway.

In any event, we see no basis for concluding that the statute, if applicable, would preclude award for removal of the vessels to the owner of the vessels if the owner is the low bidder. The government's only interest is in having the vessels removed at no cost to the government. If the owner of the vessels is the low bidder, upon removal the government will have the right of set off against the owner/contractor for the amount of the bid and the purpose of the statute will have been fulfilled.

The protest is denied.


James F. Hinchman
General Counsel