



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Security Storage & Moving Service, Inc.

File: B-229894; B-229906

Date: April 26, 1988

DIGEST

1. Cancellation of invitation for bids after bid opening is justified where Department of Labor informed the agency that the wage determination used was erroneous, and use of proper, lower wage determination will result in cost savings to the government; it is not the function of General Accounting Office to determine the correctness of a wage determination.
2. Failure by agency to make award within 9 calendar days of bid opening does not constitute unreasonable delay in making award; notice of erroneous wage determination in the solicitation justifies delay in making award until proper course of action is decided.
3. Agency's action in allowing bidder to correct solicitation number on the outside of its bid envelope is unobjectionable where the bid envelope itself remained sealed until bid opening.
4. Fact that one bidder has potentially beneficial information as to correct wage rate in advance of resolicitation is unobjectionable where the information was not obtained as a result of any improper action by the agency.
5. Allegation that solicitation allowed insufficient time for bid preparation, which concerns an alleged defect apparent on the face of the solicitation, is untimely and will not be considered where raised after bid opening.

DECISION

Security Storage & Moving Service, Inc., protests the cancellation of Department of the Army invitation for bids (IFB) No. DABT10-87-B-0240, and the award of a contract to

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Weathers Brothers Transfer under Schedule III of replacement IFB No. DABT10-88-B-0028, for local moves of household goods and baggage. We deny the protest in part and dismiss it in part.

The original IFB, issued on September 4, 1987, contained three schedules upon which to bid. Three responsive bids were received by the bid opening date, October 5. The protester was the low bidder on Schedule III, but prior to any awards, on October 14, the Department of Labor (DOL) notified the contracting officer that the wage determination included in the solicitation package was in error, and that the appropriate wage determination was approximately \$1 per hour lower. The error was discovered as a result of an inquiry initiated by Weathers Brothers, one of the bidders. Based on this information, the contracting officer decided to cancel the solicitation and resolicit, reasoning that, since the contract was labor intensive, resolicitation could result in considerable savings to the government. On November 25, the Army issued the new solicitation (IFB No. DABT10-88-B-0028) with a bid opening date of December 7, and Weathers Brothers now was the low bidder on Schedule III.

Security filed an agency-level protest on December 7, in which it protested the change in the wage determination. On December 9, Security sent a letter to the contracting officer which stated further details of its protest, questioning again the propriety of the change in the wage determination and raising four more issues, including the sufficiency of the bid preparation time. By letter of December 16, the Army denied Security's protest. Security then filed the current protest in our Office on December 28, raising the same arguments.

Wage Rate/Cancellation

Security maintains that it was improper for the Army to incorporate the changed wage determination in the second solicitation because Security has been paying the higher, original wage rate under its current contract. As a result, Security claims, it realistically cannot compete here because it cannot very well lower the wages of its employees. The record confirms, however, that DOL advised the Army that the original IFB contained an incorrect wage determination, and it is not the function of our Office to review the correctness of a DOL wage determination. Prestige Construction Company, B-224327, Nov. 19, 1986, 86-2 CPD ¶ 560.

Security's challenge to the cancellation of the original solicitation based on the change in the wage determination

similarly is without merit. Although an agency is required to have a clear and compelling reason to cancel the solicitation after bids have been opened, Prestige Construction Company, B-224327, supra, we have specifically held that discovery of an improper wage determination in a solicitation justifies cancellation where the error was not discovered until after bid opening. Id. We also have held that cancellation is proper where, as here, it will result in cost savings to the government. See Martin Widerker, Inc.--Request for Reconsideration, B-223159.3, Mar. 18, 1987, 87-1 CPD ¶ 300.

Award Delay

Security argues that the contracting officer improperly failed to make award under the original solicitation with reasonable promptness and that this undue delay prevented Security from receiving a contract to which it was entitled. This argument is without merit. The minimum bid acceptance period in the IFB was 60 calendar days, and it was only 9 calendar days after bid opening that the agency was advised of the incorrect wage determination. This was not an undue delay. Further, after notice of the erroneous wage determination, the contracting officer clearly was justified in delaying award until deciding upon the proper course of action; such problems in the award process fall within the category of administrative delays that properly may occasion a delay in making award. See generally Yardney Electric Division, 60 Comp. Gen. 499 (1981), 81-1 CPD ¶ 440.

Issuance of New IFB

Security asserts that it was allowed inadequate time to prepare its revised bid under the new IFB. This ground for protest was evident from the face of the solicitation, however, and thus had to be raised before bid opening in order to be timely. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1988); P&P Brothers General Services, B-219678, Oct. 22, 1985, 85-2 CPD ¶ 438. As Security first raised this issue in its December 9 protest to the Army, after the December 7 bid opening, it is untimely and will not be considered. Security blames any untimeliness problems on the contracting officer's failure to inform Security that certain grounds for protest had to be raised prior to bid opening. It is well-established, however, that, alleged agency misinformation notwithstanding, we consider protesters to be on constructive notice of our Regulations because they are published in the Federal Register. Pacific Propeller, Inc., B-229868, Dec. 30, 1987, 87-2 CPD ¶ 649.

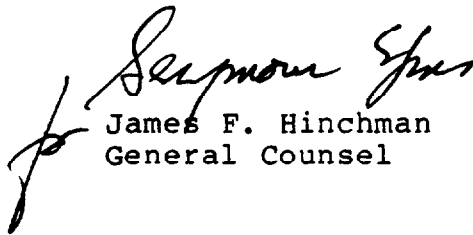
Propriety of Bid Opening

Security objects to the contracting officer's actions at the December 7 bid opening on the ground that she improperly allowed a Weathers Brothers representative to correct the solicitation number on the outside of the bid envelope. This action was unobjectionable. The record shows that Weathers Brothers had written the wrong IFB number on its bid envelope, and that when the contracting officer realized this prior to bid opening, she had the firm correct the number. This occurrence was witnessed by two other Army employees, and there is no evidence that the bid was opened or that any other impropriety took place.

Unfair Advantage

Security contends that because only Weathers Brothers knew that the delay after the original bid opening likely was related to its inquiry involving the wage determination, Weathers Brothers had an unfair head start in recalculating its bid based on its presumed knowledge of the proper wage rates. This argument is without merit. Any information held by Weathers Brothers resulted, not from any improper action on the part of the Army, but from the firm's own diligence in investigating the propriety of the wage determination in the original IFB. Weathers Brothers' possession of such information does not constitute an improper competitive advantage. Communications Corps Incorporated, B-195778, Feb. 20, 1980, 80-1 CPD ¶ 143.

The protest are denied in part and dismissed in part.


James F. Hinchman
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