Isrin

The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Arrow, Inc.

File: B-231001

Date: July 13, 1988

DIGEST

Pursuant to reprocurement for default, contracting agency acted properly in accepting surety's proposal to have the contract work completed at the defaulted contract price by a contractor that did not bid on the original procurement; agency was not required to reprocure from next low bidder on original procurement.

DECISION

Arrow, Inc., protests the award of a contract to Hill Maintenance Company under a reprocurement to replace the defaulted contractor under contract No. N62467-87-C-8529, awarded by the Naval Training Center Complex, Orlando, Florida for water and sewer systems operation, maintenance and repair. We deny the protest.

The Navy received 3 bids on the original solicitation, which were opened on January 21, 1988. The low bidder, Green Plant Enterprises, was awarded the contract on February 19, but then subsequently failed to satisfy performance and payment bonding requirements, and was soon thereafter terminated for default. Green Plant's bid bond surety offered the incumbent contractor, Hill Maintenance, to complete the contract at a unit price equal to Green Plant's, which was lower than Arrow's second low bid on the original IFB. The Navy accepted the surety's proposal and awarded the contract to Hill Maintenance for the completion of the contract.

Arrow principally argues that the award was improper because Hill was not a bidder on the original IFB and was not subjected to a pre-award survey; Arrow maintains that Hill is not, in fact, responsible. Arrow concludes that it should receive the award as the next lowest responsive, responsible bidder on the original IFB.

Much of Arrow's protest seems to be predicated on a misunderstanding that this is a normal federal procurement. In the case of a reprocurement after default, however, the statutes and regulations governing regular federal procurements are not strictly applicable. TSCO, Inc., 65 Comp. Gen. 347 (1986), 86-1 CPD ¶ 198. To repurchase the same requirement on a defaulted contract, the contracting officer may "use any terms and acquisition method deemed appropriate for the repurchase." Federal Acquisition Regulation (FAR) § 49.402-6(b).

Allowing a surety to complete a contract on which it was pledged is a permissible means of reprocurement under FAR § 49.404(b). This regulation, which deals generally with surety takeover agreements in the case of default, provides that, because the surety is liable for reprocurement costs in case of default, it has "certain rights and interests in the completion of the contract," and the contracting officer thus must carefully consider proposals from the surety regarding completion. More specifically, FAR § 49.404(c) provides that where a surety proposes to complete the contract work upon default, "this should normally be permitted" unless there is reason to believe that the firm proposed to complete the work is not competent and the interests of the government thus would not be served.

Here, the surety proposed to have the remainder of the defaulted contract performed by Hill, the former incumbent contractor, because Hill offered to perform at the defaulted contract price and the surety obviously believed that Hill was capable of performing. The Navy did not object to the surety's proposal, heeding the FAR, and also having no reason to believe that Hill could not perform. Although the FAR does provide that the agency must obtain the maximum competition practicable on a reprocurement, FAR § 49.402-6(b), under the circumstances here, it was permissible for the Navy to make award in accordance with the other directly applicable FAR provision. The Navy was not required to make award to Arrow at a higher price merely because that firm had been the second low bidder on the original IFB.

Regarding Hill Maintenance's responsibility, the Navy has stated that they found Hill Maintenance competent and qualified to perform the work, and we find nothing in the record that would lead us to question this determination. We note, furthermore, that in normal federal procurements, a peraward survey is not required, Electrontics Corp., B-229934, Jan. 19, 1988, 88-1 CPD ¶ 52. Also, we do not review an agency's affirmative responsibility determination absent a showing of possible fraud or bad faith, or that definitive responsibility criteria were not met, none of

which is evident here. 4 C.F.R. § 21.3(m)(5); Nationwide HealthSearch, B-230130, et al., May 13, 1988, 88-1 CPD ¶ 454. Arrow does assert that the reprocurement was a "sham" designed to benefit Hill, but has not met its burden of presenting evidence to support this allegation of bad faith and bias on the part of Navy procuring officials. Dynalectron Corporation, B-216201, May 10, 1985, 85-1 CPD ¶ 525.

The protest is denied.

James F. Hinchman
General Counsel