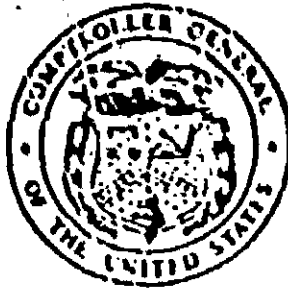


004804

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-180425

DATE:

40952
July 18, 1974

MATTER OF: Airflote, Incorporated ^P3701

DIGEST:

[Claim by rejected bidder for bid preparation costs] is not supported by record which fails to establish that contracting officer's refusal of bid opening extension and failure to advise that telegraphic bids would not be considered was arbitrary or capricious. See Excavation Construction, Incorporated v. United States, No. 408-71, United States Court of Claims, April 17, 1974.

Invitation for bids (IFB) No. 65144 was issued on October 18, 1973, by the Federal Supply Service, General Services Administration (GSA), Denver, Colorado, for a definite quantity of polyamide fire-resistant shirts. The solicitation, as amended, provided for bid opening at the GSA Denver Office on December 11, 1973, at 2:00 p.m., and incorporated by reference standard forms (SF) 33A (March 1969) and 32 (November 1969). A.00043
D3397

On December 11, 1973, at 7:45 a.m., GSA received a telegraphic bid from Airflote, Incorporated, of \$16.72 per unit on Items 1, 2, 3, 5 and 6. At bid opening, the low bidder for the same items was determined to be Glenn Barry ^{C.1699} Manufacturers, Incorporated, with a unit price of \$14.56. C.1699
On December 13, 1973, GSA received by certified mail a sealed bid from Airflote. In order to determine if the bid was timely mailed, GSA requested, and Airflote provided, evidence of when this bid was deposited with the postal station. The information supplied by Airflote indicated that its bid was not mailed until 9:30 a.m. on December 11, 1973. Thus, GSA rejected Airflote's written bid because it was late and it did not fall within the categories enumerated in

BEST DOCUMENT AVAILABLE

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Federal Procurement Regulations (FPR) section 1-2.303, permitting consideration of late bids. As the solicitation did not authorize consideration of telegraphic bids, Airflote's telegraphic bid was also rejected by GSA. As a result of this action, Airflote filed a protest with this Office on January 10, 1974. On January 16, 1974, award under this solicitation was made to Glenn Berry.


Since the record shows that Airflote's telegraphic bid was not low in any event, and since Airflote has advised us that its sealed bid merely reiterated its telegraphic bid, it is reasonable to assume that Airflote is not insisting that it should have received the award in question as the low bidder. Rather, its protest appears to focus on the issue of whether GSA caused Airflote to unnecessarily expend money in order to submit an untimely bid. In this connection, Airflote points out that on December 6, 1973 it discussed with the contracting officer, Mr. D. C. Petersen of GSA, the fact that the sole supplier of the basic shirt fabric required under the IFB could not begin delivery in time for any bidder under this solicitation to meet the IFB's delivery requirements. Airflote contends that in a second conversation with Mr. Petersen on December 10, 1973, Mr. Petersen acknowledged that there would be a fabric delivery problem but rejected Airflote's request for a time extension. Airflote asserts that it then advised Mr. Petersen it would have to submit a telegraphic bid in order to be able to bid at all, and that Mr. Petersen made no reply. Airflote contends that GSA's failure to extend bid opening in view of the delayed delivery of the fabric was capricious and that Mr. Petersen's failure to advise Airflote that telegraphic offers were unauthorized was in the nature of a deceit. The protester states that GSA's actions prevented it from making a timely bid, and that these actions caused it to expend money unreasonably and it should therefore be compensated for its expenditures.

The courts have recognized that unsuccessful prospective contractors have no enforceable right to recover bid preparation costs except where bids were not invited in good faith or in cases where there is a "showing of arbitrary and capricious action by the Government in awarding the contract to another and thus failing to give honest consideration to the disappointed bidder's bid." See Excavation Construction, Incorporated v. United States, No. 408-71, United States Court of Claims, April 17, 1974, and cases cited.

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With regard to Airflote's contention concerning the telegraphic bid, it was on notice by reason of paragraph 5(b) of SF 33A that such a bid would "not be considered unless authorized by the solicitation", which was not done here. Also, paragraph 3 of SF 33A provided that oral explanations or instructions given before award would not be binding unless furnished to all prospective offerors as an amendment to the solicitation. Thus, the GSA representative's failure to respond to Airflote's indication that it would send a telegraphic bid cannot be considered deceitful or tacit approval of Airflote's proposed action. 52 Comp. Gen. 281, 284 (1972). In regard to the contracting officer's failure to grant an extension of the bid opening time, the record shows that although the solicitation was issued on October 18, 1973, it was almost two months later and the day before bid opening when Airflote requested the extension. Furthermore, there is no indication in the record of any other prospective bidder having requested an extension. Pursuant to FPR 1-2.202-1 and 1-2.207, the contracting officer has considerable discretion concerning the establishment of the bid opening date and the extension thereof. See also General Services Administration Procurement Regulations (GSPR) 5-2.202-50. On the facts before us, it does not appear that this discretion was exercised unreasonably in denying Airflote's request for an extension. In these circumstances, the record does not establish the standard of administrative misconduct necessary to support a claim for bid preparation costs. See Excavation Construction, Incorporated v. United States, supra.

Accordingly, the claim for bid preparation costs is denied.


Deputy Comptroller General
of the United States