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DECISION



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

FILE: B-189956

DATE: December 12, 1977

MATTER OF: Ruidoso Aviation Inc.

DIGEST:

Where Government's administrative error in adding up bid on abstract of bids resulted in erroneous award to second low bidder, award was improper and new requirements should be readvertised rather than exercising option under current contract; moreover, award to low bidder (protester) at present time on terms proposed which deviate from those in original invitation would be improper.

Ruidoso Aviation Inc. (Ruidoso) protests the award of a contract to H. Webb Hayes and Associates (Hayes) under invitation for bids (IFB) No. R3-77-22, issued on February 4, 1977, by the United States Forest Service for the lease of two aircraft for 1 year with the option of renewing for the 2 following years. Bids were opened on March 8, 1977, and the Forest Service reports that on May 18, 1977, award was made to the alleged low bidder, Hayes, for items Nos. 1 and 2 in the amount of \$223.45 per day per aircraft daily rental rate during the guaranteed days and an optional period flight rate per hour for use outside the guaranteed period of \$207.45.

By letter dated May 23, 1977, the Forest Service notified Ruidoso that award had been made to Hayes. The contracting officer reports that on July 20, 1977, a representative of Ruidoso visited his office to discuss the award. Ruidoso's representative stated that the Hayes bid did not add up to the figure shown on the bid abstract sheet. Upon recalculating the prices bid by Hayes, an error in addition was discovered for the first time. Hayes' actual bid was \$114,594 rather than \$110,925 which appeared on the abstract. Therefore, Ruidoso's bid of \$113,880 was in fact the low bid, and the award should have been made to that firm.

By letter dated August 13, 1977, to the Forest Service, Ruidoso stated that in view of the short time remaining on the contract this year, it would be impracticable for the firm to assume the contract for the remainder of the guaranteed period in 1977. Ruidoso indicated

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that it would take about 30 days to acquire the aircraft and have the Forest Service radio equipment installed. The contracting officer stated that this would leave only 30 to 45 days of guaranteed use under the contract this year. If it is later determined not to renew the contract for the next fire season, award to Ruidoso could result in a financial burden on it. The contracting officer advised that discussions with a representative of Ruidoso indicated that the firm would not want to disturb the award for this year's performance, but wanted the Hayes contract terminated at the end of this year and the balance awarded to Ruidoso at its original bid price.

The Forest Service contends that since Ruidoso did not agree to obtain the planes within the time called for in the IFB, an award to that firm is precluded and in the absence of being the incumbent contractor, Ruidoso is not eligible for the renewal options. Under these circumstances, the Forest Service requests our advice concerning the proper course of action. The contracting officer recommends that the contract with Hayes be permitted to continue until the end of this year and that the requirements be readvertised rather than exercise the renewal options.

The IFB indicates that the Forest Service intended to rent the aircraft from about March 25 to about October 31, 1977. However, the IFB states that the contract shall be effective from the date of award through the following January 15, and may be renewed by mutual agreement, twice, for 1 year each time at the same terms and conditions, provided the contracting officer is notified in writing of the contractor's renewal intentions at least 60 days prior to contract expiration. If notice is not received, the Government may exercise its unilateral right to renew 30 days prior to contract expiration. The IFB requested bidders to submit a price for an optional period (flight rate per hour during the period from on or about October 31, 1977, to January 15, 1978. The IFB further states that "The aircraft fully meeting specifications is to be delivered at contractor's expense to either Albuquerque Airport, New Mexico, or Marana Air Park, Arizona, (contractor's option) at least two days before the contract period begins." Under these circumstances, Ruidoso contends that it would be fair to award the contract to its firm prior to the expiration of this year's contract and that Ruidoso should not be required to obtain any aircraft until the contracting officer notifies its firm that the

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contract will be renewed. We cannot agree with Ruidoso's proposed course of action to remedy the erroneous award to Hayes for the following reasons.

In prior cases where our Office has held that an award was improper, the remedy usually recommended, where feasible, is that the contract be terminated for the convenience of the Government and award be made to the low responsive bidder if that firm's bid is still available for acceptance in accordance with the stated requirements. See Metalsco, Incorporated, B-187882, March 9, 1977, 77-1 CPD 175. In the present case, the appropriate remedy would have been to terminate Hayes' contract upon learning of the erroneous award in July and permit Ruidoso to complete the contract if the firm so desired. The record discloses that Ruidoso was afforded such an opportunity in August but declined in view of the fact that the required work was scheduled for completion on or about October 31, 1977. The subject IFB inadvertently omitted an "Optional Use Period" clause which permits the Government to place orders for service, if needed, between November 1, 1977, and January 15, 1978, subject to acceptance by the contractor. Ruidoso desired to obtain the contract only after October 31, 1977, thereby avoiding the expense of obtaining the aircraft prior to learning whether the contracting officer intended to renew the contract. While Ruidoso's proposed course of action might well represent a sound business judgment, the fact remains that the firm was not willing to comply with the contract provisions when afforded the opportunity and therefore such action precluded an award to its firm under the subject IFB.

It is a basic principle of Federal procurement law that to be considered for award, a bid must comply in all material respects with the invitation for bids so that all bidders will stand on an equal footing and the integrity of the competitive bidding system will be maintained. Ruidoso's proposed action is not in conformance with the terms and specification requirements of the IFB and therefore any award to that firm would not be proper. See Lift Power Inc., B-182604, January 10, 1975, 75-1 CPD 13.


We cannot agree with Hayes' contention that it be given the opportunity of continuing its contract for 2 more years under the option provisions of the contract. Our Office has specifically rejected the argument that a contractor who has acted in good faith and did not induce the error cannot be subject to corrective action.

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In Dynamics International, Inc., B-183957, December 29, 1975,
75-2 CPD 412, we stated:

"Since the contractor did not contribute to the mistake resulting in the award and was certainly not on direct notice before award that the procedures being followed were wrong, the award should not be considered plainly or palpably illegal, and the contract may only be terminated for the convenience of the Government * * *."

In view of the erroneous award to Hayes, we agree with the Forest Service's position that it will not exercise the option under Hayes' contract but will resolicit on a competitive basis any requirement it may have for the aircraft after the expiration of Hayes' current contract on January 15, 1978.


Deputy Comptroller General
of the United States