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DECISION



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

FILE: B-190397

DATE: January 27, 1978

MATTER OF: Martin Electronics, Inc.

DIGEST:

1. Since small business concern admittedly submitted reasonably priced low bid under set-aside procurement in which five other concerns competed, objections that other bids are unreasonably high-priced and that other bidders might have competed if certain items were not added to procurement are irrelevant.
2. Protest that procurement should not have been small business set-aside is rejected, since there were five bidders and award will be made at reasonable price.

On October 12, 1977, a protest was received from Martin Electronics, Inc. (MEI), against a proposed award to Kalgore Corporation under IFB NO0104-77-B-0892 issued by the Navy's Ships Parts Control Center, Mechanicsburg, Pennsylvania, on July 19, 1977, for a procurement of marine location markers.

In early September 1977, Amendment 0003 to the IFB was issued. The amendment extended the time of bid opening for the IFB to October 3, 1977, and conveyed the following changes to the then "unrestricted" IFB:

- (1) The "unrestricted" solicitation was changed to a "100% Small Business Set-Aside" (under a "size standard" of 1500 employees);
- (2) Government-furnished materials were added to cover items not available from commercially available sources;
- (3) Additional items were added as items 0006 through 0011 of the IFB.

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MEI and five other bidders submitted bids for the requirement on October 3, 1977. MEI's bid was thereafter rejected as not in compliance with the small business size standard. The Navy then proposed to award to Kilgore Corporation--a concern in compliance with the size standard and the lowest bidder under the IFB.

MEI's grounds of protest may be summarized, as follows:

(1) Although Kilgore's bid is "competitive," the bids of the four other small business bidders are "non-competitive" (that is unreasonably high);

(2) Kilgore cannot meet the relevant small business size standard;

(3) The addition of items 0006 through 0011 prevented additional qualified bidders from participating in the procurement;

(4) The procurement should not have been made a small business set-aside under the 1500-employee size standard.*

The Navy's position on the grounds of protest (keyed to the above paragraphs) is:

(1) Kilgore submitted a bid which even MEI admits is reasonably priced; hence, MEI's objection about the unreasonable prices of the other bidders is irrelevant. (This position is implicit in the Navy's response to the protest.)

(2) By decision dated October 21, 1977, the SBA has found Kilgore to be a small business for the procurement;

(3) (4) The failure of MEI to protest these matters prior to bid opening renders these grounds of protest untimely under GAO's Bid Protest Procedures (4 C.F.R. § 20 (1977)).

*MEI says that it timely objected to this standard prior to bid opening with an agency representative.

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ANALYSIS

(1) Since Kilgore qualifies as a small business for the procurement and because its bid is admittedly reasonable, we agree that the alleged "non-competitive" nature of the other bids received is irrelevant.

(2) Even if we assume that MEI properly objected to an agency representative about the changes in the IFB prior to bid opening (regarding the small business set-aside and the addition of the extra items), we find nothing in the changes subject to legal question because:

(a) There were five bidders and award will be made at a reasonable price. See Armed Services Procurement Regulation § 1-706.3(a) and § 1-706.5(a)(1) (1976 ed.).

(b) The comment by the SBA in its decision on MEI's size protest to the effect that a 500-employee size standard might have been more appropriate under the IFB is for future application only; moreover, it is clear that MEI would not have benefited from a 500-employee size standard since it could not meet a 1500-employee size standard;

(c) Since award is to be made at a reasonable price and five bidders competed, the fact that additional bidders might have competed had the additional items not been added is irrelevant.

Protest denied.

R. J. K. [Signature]
Deputy Comptroller General
of the United States