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DECISION



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

FILE: B-203226.2

DATE: May 24, 1982

MATTER OF: Wells Fargo Guard Services --
Reconsideration

DIGEST:

1. Protest previously dismissed as untimely will be considered on the merits where protester submits evidence showing that protest was timely filed.
2. Security guard services are standard commercial services and do not become otherwise by virtue of the fact that the contractor must obtain a Top Secret facility clearance and provide some guard personnel who have Top Secret clearance. Therefore, bidding time of 22 days allowed by agency did not contravene regulatory guidance that a bidding time of at least 30 days should be permitted for "other than standard commercial * * * services."
3. Allegation that solicitation unduly restricted competition because it did not state when contractor would be expected to commence performance is without merit where it does not appear that protester attempted to obtain this information prior to bid opening and bids were received from seven firms.

Wells Fargo Guard Services (Wells Fargo) protests the award of a contract for security guard services by the General Services Administration (GSA) under invitation for bids (IFB) No. GS-11C-10170. This protest was the subject of our prior decision in Wells Fargo Guard Services, B-203226, May 27, 1981, 81-2 CPD 62. In that decision we found the protest to be untimely because it concerned alleged improprieties in the solicitation and our time/date stamp showed that the protest was received in our Office after bid opening. We held, therefore, that the protest

failed to satisfy the requirements of our Bid Protest Procedures that protests based upon alleged improprieties apparent on the face of a solicitation be filed prior to bid opening. See 4 C.F.R. § 21.2(b)(1) (1981).

Subsequent to the issuance of that decision, Wells Fargo requested reconsideration and submitted a receipt from a courier service as evidence that its protest had been timely filed. The receipt, the accuracy of which was verified by the GAO employee who accepted the document, showed that the protest was received in this Office at 12:50 p.m. on May 7, 1981, prior to the bid opening on that date, even though the protest was not time/date stamped by our Office until the next day. It is now clear from the evidence submitted by Wells Fargo that its protest was timely. Therefore, we now consider the protest on the merits.

The foundation of its protest, Wells Fargo states, is that the solicitation was so structured as to unfairly favor the incumbent contractor, in that it was advertised for a period of time less than that required by section 1-2.202-1(c) of the Federal Procurement Regulations (FPR) and it did not indicate how much time the contractor would have to prepare for performance even though Top Secret facility and personnel clearances had to be obtained. For the reasons that follow we reject Wells Fargo's contentions and deny the protest.

The solicitation in question was issued by the GSA on April 15, 1981 and was synopsisized in the Commerce Business Daily (CBD) on April 20, 1981. Since it was on the bidders list, however, Wells Fargo was mailed a copy of the IFB when it was issued. The IFB requested bids from those interested in supplying security guard services, for one year, at ten federally owned and leased buildings in Washington, D. C. Bid opening was set for May 7, 1981--22 days after the solicitation was issued.

The IFB specified that the successful bidder should have a Top Secret facility clearance and that each of its employees assigned to the Weather Bureau Building

should have a Top Secret clearance before being assigned to that building. The low bid on the solicitation was submitted by Pinkerton's, Inc. -- which was not the incumbent--and it was awarded the contract on May 21, 1981.

Wells Fargo initially argues that in seeking armed security guards with Top Secret clearances, GSA was procuring other than standard commercial services and therefore was required by FPR § 1-2.202-1(c) to have the procurement open for bids for 30 days rather than 22 days. On the other hand, GSA argues that the security guard services it sought were standard commercial services and therefore the 22 day bidding period satisfied the requirements of the FPR. In pertinent part, FPR § 1-2.202-1(c) provides that:

"As a general rule, bidding time should not be less than 20 calendar days when procuring standard commercial articles and services and not less than 30 calendar days when procuring other than standard commercial articles or services."

Wells Fargo's contention that the solicitation was for other than standard commercial services is based on the fact that guards for one of the ten facilities were required to have Top Secret clearances. We do not agree with this contention. Security guards with Top Secret clearances were required at only one of the ten sites, and even at this site the requirement was for one guard at a fixed security post at the building's main entrance, three shifts per day, seven days a week. In terms of the productive man-hours required by the solicitation, this represented less than 10 percent of the total amount of guard services being procured. Therefore, even if we agreed with Wells Fargo that the services of security guards with Top Secret clearances are other than standard commercial services, in this case we do not view the amount of those services being procured to be sufficient to significantly alter the character of this procurement as one predominantly for standard security guard services.

Moreover, the record shows that seven companies--excluding the protester--submitted bids under this solicitation. Since a number of potential contractors were able to respond within the time allowed, it appears that the services requested were not of such a character that a 30 day bidding period was required.

The protester next argues that the solicitation unfairly favored the incumbent because it did not specify the date when performance was expected to commence, yet the successful bidder was to have a Top Secret facility clearance and Top Secret clearances for the security guards to be assigned to the Weather Bureau Building prior to commencing performance. This situation unduly restricted competition, Wells Fargo argues, because obtaining the necessary security clearances would be a lengthy process and only the incumbent would be willing to risk its bid and performance bonds to be ready to assume responsibility for performing the contract on short notice.

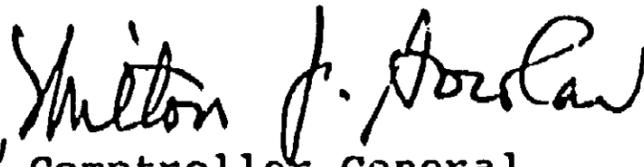
We agree with Wells Fargo's contention that the IFB was defective in that it did not advise potential bidders as to when the contractor would be expected to commence performance. However, we do not agree that this defect unfairly favored the incumbent or that it unduly restricted competition.

The record contains an internal GSA document that shows the incumbent's contract expired on May 31, 1981 and GSA desired performance under the new contract to begin on June 1, 1981, to avoid an interruption of coverage. GSA's report does not contain any indication as to the reason for the omission of a performance commencement date from the IFB, and we can only assume that it was due to an oversight on GSA's part. Nevertheless, we do not believe that Wells Fargo was precluded from submitting a bid solely because of this omission.

Although Wells Fargo argues that it could not reasonably submit a bid without some indication of when performance would be expected to commence, its argument is weakened by the fact that it was in possession of the IFB for some time prior to the date set for bid opening and it never requested this information from GSA. Instead it waited until 40 minutes prior to bid opening to file its protest with this Office.

In view of these circumstances, and the fact that seven firms did submit bids under the IFB, we do not believe that the omission of the performance starting date from the IFB unduly limited competition. Therefore, we find no basis for disturbing the procurement.

Accordingly, the protest is denied.

for 
Comptroller General
of the United States