Proc II

DECISION

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

10,174

FILE: B-194724 DATE: May 14, 1979

MATTER OF: Lion Recording Services, Inc.
[Request for Reimbursement of Expenses Incurred in Attending Pre-Bid Meeting]

DIGEST:

1. GAO does not question an agency's determination that a less restrictive solicitation will meet Government's needs absent evidence of fraud or intentional misconduct.

2. Protester may not be reimbursed for expense incurred in attending pre-bid meeting for procurement where offeror merely complains that Government, prior to quotation due date, removed restrictive qualification provision (requirement for pre-bid meeting) from solicitation and has not shown that Government will not fairly consider its quotation.

3. When it is apparent from protester's submission that there is no legal basis for sustaining protest, GAO will not obtain a report from contracting agency.

AGC 00022

The Department of Health, Education and Welfare (HEW) issued Request for Quotations (RFQ) 79F0326848 requiring offerors to attend a "pre-bid" meeting to qualify for the procurement. The solicitation was amended after issuance to delete this requirement and Lion Recording Services, Inc. (Lion), which attended the "pre-bid" meeting, has protested because it has not been compensated for the expense incurred in attending that meeting.

CNG 01609

HEW included the "pre-bid" meeting requirement in the solicitation because the agency initially felt that attendance at the meeting was necessary to ensure that offerors had a complete understanding of the specifications. The agency later determined that this requirement was unduly restrictive of competition and issued an amendment which deleted the mandatory requirement.

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Insofar as Lion is protesting the solicitation amendment which deleted the requirement for attending the "pre-bid" conference, this Office does not question an agency's determination that a less restrictive solicitation will meet the Government's needs, absent fraud or intentional misconduct. Miltope Corporation -- Reconsideration, B-188342, June 9, 1977, 77-1 CPD 417. When a protester objects that the solicitation should be more restrictively drawn, the protester's apparent interest conflicts with the objective of our bid protest function, that is, to ensure attainment of full and free competition. Whether a solicitation provides sufficiently rigorous qualification requirements is ordinarily of primary concern to procurement personnel and user activities. It is they who must suffer any deficiencies arising from the lack of contractor qualification to perform a contract.

The protest, therefore, is dismissed.

Lion also objects because the firm was not reimbursed for the expense it incurred in attending the pre-bid meeting for this procurement. These expenses may be considered proposal preparation costs which may be recovered only where the Government acts arbitrarily or capriciously in evaluating an offeror's proposal. The underlying rationale for this rule is that every offeror has the right to have its offer honestly considered by the Government and, if that obligation is breached and an offeror is therefore put to needless expense in preparing an offer, it is entitled to recovery of expenses. Morgan Business Associates, B-188387, May 16, 1977, 77-1 CPD 344. Obviously this is not the case here, where the offeror merely complains prior to proposal due date that the Government removed a restrictive qualification provision from the solicitation which the agency considered to be unduly restrictive of competition. Lion does not contend that its quotation will not be fairly considered. Therefore, we see no basis for sustaining a claim for proposal preparation costs and it is summarily denied.

Lion complains that it has not had an opportunity to bid on previous HEW procurements for these services. In this connection, we have been informally advised by HEW

that the agency is preparing a bidder's list and that Lion will be placed on the list.

Finally, although it is our general practice to obtain a fully documented report from the contracting agency when a protest or claim is filed, we did not do so in this case because it was apparent from Lions' submission that there was no legal basis for sustaining the protest and that any claim at best is premature. James B. Nolan Company, Inc.--Reconsideration, B-192482, February 9, 1979, 79-1 CPD 89.

R. F. Keller

Deputy Comptroller General
of the United States