



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

B-179683

November 13, 1973

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Martin K. Eby Construction Company,  
Incorporated  
Post Office Box 3196  
Little Rock, Arkansas 72202

Attention: Mr. Raymond E. Fanning  
Vice President and Area  
Manager

Gentlemen:

We refer to your letter of August 9, 1973, to the contracting officer, Corps of Engineers, Vicksburg District, protesting the award of a contract under invitation for bids (IFB) No. DACW38-73-B-0183, and requesting the transmittal of your protest to our Office for resolution. For the reasons explained below, your protest is denied.

The subject IFB, issued on June 19, 1973, by the Department of the Army, Vicksburg District, Corps of Engineers, sought bids for the removal of specified locks and dams from navigable waterways in Louisiana. This procurement was a readvertisement of IFB DACW38-73-B-0119, which had been cancelled after bid opening but prior to award due to the expiration of wage rates. The record shows that your firm submitted the highest of four bids received under the original IFB.

The time set for opening of bids under the readvertisement was 11:00 a.m. on July 24, 1973, at which time bids were received from Dore Wrecking Company and Souter Construction Company, Incorporated, with Dore's bid being low at \$859,400.

The record, including pertinent correspondence between your firm and the contracting agency, reveals that on the date of bid opening you were advised by a friend that the project was being bid on that date; that you telephoned the procuring activity at 10:25 a.m. to advise that you had not received the readvertised IFB package; and that you requested permission to submit a telegraphic bid. You were reportedly advised that telegraphic bids

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were not authorized under the subject IFB. You then inquired about the possibility of a postponement of the bid opening, but were advised that it was too late to do so. At 11:25 a.m. your telegram was received by the procuring activity in which it was stated that notice of the subject project's intended readvertisement had been received in the form of a letter from the procuring activity dated June 15, 1973, but that you had received no further word concerning the matter.

By letter of July 24, 1973, the Chief, Procurement and Supply Division, advised you that his records indicated that advance notice of the readvertisement was mailed to your home office in Wichita, Kansas, on June 19, 1973. A further letter to you dated August 2, 1973, from the contracting officer, stated that this was the mailing address furnished by your company on February 3, 1970, for the purpose of receiving notices of the various types of construction work in that District, and that notice of the original IFB, under which you submitted a bid, had also been sent to your Wichita office. The letter stated that you had made no request to place your Little Rock office on the mailing list until July 28, 1973. The letter also explained that due to the fact that your telephone call was received only some thirty minutes prior to bid opening, your request for postponement of bid opening could not be favorably considered.

By letter of October 10, 1973, our Office received a determination by the contracting officer, dated October 2, 1973, that in accordance with Armed Services Procurement Regulation (ASPR) 2-407.8(b)(2) and (3), it was considered necessary to award a contract prior to the resolution of your protest by our Office. This determination was based upon the fact that failure to remove the existing dams and locks prior to the 1973-74 high water season might result in a delay of eight months or more with the consequence that the current accident rate, deemed unacceptable by the Corps of Engineers, would not only persist but might increase. For this reason, an immediate award was considered necessary, and it is understood that a contract was awarded to Dore.

You state that yours is a reputable firm that has performed considerable work for the Corps of Engineers in Arkansas. You further contend that you were planning to bid on the readvertised project, and had you been afforded such an opportunity, your bid would have been low.

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With regard to your request that bid opening be postponed in order to permit you to submit a bid, ASPR 2-402.3 sets forth the conditions under which such action may be taken. However, none of those enumerated conditions pertains to the circumstances of the instant case. Accordingly, we cannot say that the procuring activity acted unreasonably in denying your request.

Concerning your request to submit a telegraphic bid, Standard Form 22, Instructions to Bidders, incorporated by reference into the IFB, contains no provision for the consideration of telegraphic bids unless authorized by the IFB, and the subject IFB fails to include such authorization. Therefore, it is our conclusion that this request was also properly denied by the contracting agency.

In resolving questions concerning the adequacy of the solicitation of supply sources, we have held that the propriety of a particular procurement must be determined on the basis of whether adequate competition and reasonable prices were obtained, not upon whether every possible bidder was afforded an opportunity to bid. B-172307, July 16, 1971, and cases cited therein.

In the instant case, advance notices were sent to 467 dealers and notices of the pending procurement were posted in public places. Additionally, we are advised that pre-bid information was published in the Commerce Business Daily. Furthermore, it is reported that notification was sent to the only address of your firm on the mailing list at the time. Therefore, it is clear that every effort was made to obtain bids from every known qualified bidder, notwithstanding your failure to receive a bid package. While only two bids were received under the subject IFB, Dore's low bid, which included profit, was only \$49,900 above the \$809,500 figure which the Government considered a reasonable contract estimate exclusive of profit. Inasmuch as the \$49,900 difference is only six percent of the estimated cost before profit, we cannot conclude that the competition was insufficient to produce a reasonable price. Therefore, we are without a legal basis upon which to object to an award under the IFB.

Accordingly, your protest is denied.

Sincerely yours,

PAUL G. DEMBLING

For the  
Comptroller General  
of the United States