



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

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W-177896

May 30, 1973

Merritt L. Murry, Esquire
1730 M Street, N.W., Suite 515
Washington, DC. 20036

Dear Mr. Murry:

We refer to letter dated January 24, 1973, from your client, National Trend-In Corporation, and subsequent correspondence, protesting the rejection of all bids under sales invitation No. 3DPS-73-112, issued by Region 3, Property Management and Disposal Service, General Services Administration (GSA). The basic issue presented by the protest is whether the grounds for the discretionary action taken by the contracting officer constituted cogent or compelling reasons to support the rejection of all bids.

The invitation was sent to 16 prospective buyers requesting quotations for the purchase of approximately 300,000 reels of used magnetic tape. The figure was the estimated quantity to become available during the 1973 calendar year from the National Aeronautics and Space Administration (NASA). Item No. 3 of the invitation states that "The Government in no way guarantees this estimate [300,000 reels] and payment must be made on actual reels of tape delivered." The tape was offered on a sealed-bid, term-contract basis for the period January 1 through December 31, 1973. Quotations were required on a per-reel basis. The time and date of the bid opening was January 4, 1973, at 11 a.m. local time.

At the time specified, the two bids received were opened and recorded. National Trend-In Corporation's bid of \$0.057 per reel was the high bid followed by that of Robert Work at \$0.00757. During the afternoon of January 5, 1973, a late bid was received from DAK Enterprises of North Hollywood, California, in the amount of \$0.165 per reel. The bid envelope was opened by mistake and was returned to DAK, stamped as having been received too late for consideration.

After considering the bids, the contracting officer determined that all bids should be rejected in the best interest of the Government. She stated that her decision was based upon 5 months of research of the surplus tape market. She discovered that the experience in other GSA regions had been that used magnetic tape should bring anywhere from 32 to 90 cents per reel.

On January 17, 1973, prior to the rejection of all bids, officials of GSA Region 3 met with officers of National Trend-In Corporation and its

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attorney at its request. GSA explained that the prices received were considered unreasonable and admitted that the late bid received from DAK had been opened through administrative error. It was further explained that the estimated quantity of 300,000 reels used in the invitation was excessive and that the then current estimate was approximately 30,000 reels. At the conclusion of the meeting, National Trend-In and its attorney were advised that letters rejecting all bids would be mailed to the two responsive bidders and that, in view of the smaller quantities of tape than originally estimated, GSA did not anticipate selling the tape on a term-contract basis. The letter formally notifying National Trend-In of the rejection was received by National Trend-In on January 22, 1973. National Trend-In Corporation's letter dated January 24, 1973, formally protesting the rejection of its bid was received by our Office on January 29, 1973.

National Trend-In, in its letter of January 24, 1973, contends that the late bid by DAK was clearly invalid and should never have been opened and it concludes that:

* * * GSA's decision resulted from the improper opening of DAK's invalid, late bid. GSA cannot cancel and reissue the same IFB once the bids were publicly opened and allow other bidders to have an improper advantage. So, rejecting all bids and reverting to the miscellaneous bid basis, GSA is attempting to do indirectly what it is forbidden to do directly; sell these tapes to one other than the highest responsive bidder. Such action is "detrimental to the Government's interest in maintaining the integrity of the competitive bidding system."

While it was clearly improper for the contracting officer to open the late bid, we cannot agree with your contention that the contracting officer acted improperly when she gave consideration to this late bid for the purpose of determining whether National Trend-In's timely bid represented a fair return to the Government.

We believe that the primary purpose of the regulations concerning late bids is to protect the bidder against public disclosure of the information contained therein where the bid is not eligible for consideration for award. B-173175, September 13, 1971. Furthermore, there is no prohibition against the use, after bid opening, of information received in a late bid for the purposes of price comparison. Although we believe that the fair market value of an item is best established through competition and not by the use of information of a speculative nature, we cannot conclude that such information should not be considered by the contracting officer in comparing prices. B-173175, August 11, 1971.

Paragraph 1 of the Special Conditions of the invitation provided in part that:

* * * The Government reserves the right to reject any and all bids or to waive any informality in bids received, as the interests of the Government may require. * * *

Also, 40 U.S.C. 454(e)(2) provides, with reference to the sale of surplus property, that the advertisement for bids shall be made on such terms and conditions as shall permit that full and free competition which is consistent with the value and nature of the property involved and that:

(C) award shall be made with reasonable promptness by notice to the responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Government, price and other factors considered; Provided, That all bids may be rejected when it is in the public interest to do so.

While the offer submitted by National Trend-In seemed to be in line with prices received on sales of similar property in GSA Region 3, it was substantially lower than prices received in other areas. National Trend-In contends, however, that GSA should not have considered prices received by its other regions in its decision to reject all bids.

We agree with GSA's General Counsel's statement, in his letter of March 9, 1973, that "We do not believe that the prior sales action in Region 3 created a vested right in National Trend-In to continue receiving awards * * *." It has long been recognized that, in connection with the awarding of public contracts, no bidder acquires an absolute right to an award of public business. 26 Comp. Gen. 49 (1946). We do not believe that a valid determination of what is in the Government's best interest can be made by considering only the prior sales history in a limited geographic area. This is especially true since the substantially higher late bid was submitted by a firm outside Region 3. Consequently, we are of the opinion that the contracting officer was acting properly when she considered prices received outside the area in reaching her conclusion that the offers received were unreasonable.

Concerning the revised estimate of the number of tapes from 300,000 to 30,000, you state in your letter of April 23, 1973, that "By offering the same unit price for 30,000 reels as for 300,000 reels, Trend-In still remains the high responsive bidder and injures no otherwise responsive bidder." While that may be true, it does not preclude the possibility that a higher price per reel may be received where a smaller lot is offered for sale. Prior history supports such a possibility and National Trend-In acknowledges this in footnote (2) of its letter dated March 20, 1973. It may be that a readvertisement

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will not result in an increased price, but on the present record it seems clear that the contracting officer's action was fully justified and was taken in good faith and that it could not reasonably be considered arbitrary or capricious. B-159925, October 24, 1966.

For the reasons stated, we find no legal basis for objecting to the rejection of all bids and the protest is therefore denied.

Sincerely yours,

PAUL G. DEMBLING

For the Comptroller General
of the United States