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DECISION



*J. Cohen
Proc. I*
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-190043

DATE: October 5, 1977

MATTER OF: The Manbeck Bread Company

DIGEST:

1. IFB stated that award for items 1-15 would be made in aggregate unless no bidder submitted bid on all 15 items. Bid on all 15 items was received. Award to bidder on only 14 items, who argues that such award would more than offset need for fifteenth item, would not be proper, since award of contract pursuant to advertising statutes must be on same terms offered to all bidders.
2. Bidder entered "Do Not Produce" rather than unit price for one of 15 items in bid schedule, but alleges that it does produce item and mistakenly failed to submit unit price. Correction by entering bid for item and displacing low bidder would not be proper, since neither existence of mistake nor bid actually intended can be established from bid as submitted.

The Veterans Administration (VA) has requested our views on a bid protest filed with the agency by The Manbeck Bread Company (Manbeck) against the award of a contract to Schmidt Baking Company (Schmidt) under invitation for bids (IFB) No. 613-3-78.

The IFB solicited bids to supply 19 items of bread and rolls to the VA Center in Martinsburg, West Virginia. The items were divided into two groups. Group 1 was comprised of items 1-15, and group 2 of items 16-19. The following statement appeared on the bid schedule above the listing of the group 1 items:

"Group 1: It is contemplated that Items 1 thru 15 will be awarded in the aggregate (see aggregate award clause)"

A similar statement concerning award of items 16-19 appeared above the listing of group 2.

Paragraph 13 of the Special Conditions provided in pertinent part:

- "13. AGGREGATE AWARD: It is contemplated that Items 1 through 15 and 16 through 19 will be awarded to the responsible bidder quoting the lowest aggregate price for all items. In the event an aggregate bid is not received for all items, the Veterans Administration reserves the right to award on either an item basis or to the lowest responsible bidder quoting the lowest aggregate price on not less than 50 percent of the items in the group, whichever is more advantageous to the Government. Bids will be evaluated on the basis of additional cost to the Government that might result from making multiple awards. * * *

Schmidt was the low bidder on both groups 1 and 2. Manbeck, which entered "Do Not Produce" on the Bid Schedule for item 15, and was low when considering only items 1-14, protests the proposed award of group 1 to Schmidt on the basis that the savings to the Government by award of items 1-14 to Manbeck would more than offset the need for item 15. In addition, Manbeck points out that it did not bid on that item in the previous solicitation, which had a similar award provision, but was awarded the contract anyway.

It is well established that award of a contract pursuant to the advertising statutes must be made on the same terms offered to all bidders. See 41 Comp. Gen. 593 (1962); 37 id. 524, 527 (1958); Federal Procurement Regulations (FPR) § 1-2.301(a) (1964 ed. amend. 118). Here, bidders were clearly advised by the Bid Schedule and paragraph 13 of the Special Conditions that award could be made for less than all items in a group only if there were no bids for all items in that group. In fact, the VA states that Manbeck received the award under the previous solicitation without having bid on all items only because none of the bidders had done so. Accordingly, and assuming that Schmidt is found responsible, award of group 1 to any bidder other than Schmidt would not be proper.

The VA also suggests that the allegation of a mistake in Manbeck's bid concerning the entry for item 15 might be involved, since Manbeck at some point made a statement to a VA Center official to the effect that "we make the item [15] and I can't understand why my clerk did not enter a price on the bid." However, correction

B-190043

by entering a unit price for item 15 and displacing Schmidt as low bidder would not be permissible, since neither the existence of a mistake nor the bid actually intended can be established from Manbeck's bid. See FPR § 1-2.406-3(a)(2) (1964 ed. circ. 1).

Atkinson
Deputy Comptroller General
of the United States