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DECISION



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

FILE: B-190622

DATE: December 9, 1977

MATTER OF: Little Giant Crane & Shovel, Inc.

DIGEST:

1. Protest that IFB's option for increased quantity clause was inadequate will not be considered, since protest was not filed prior to bid opening.
2. IFB for 120 cranes included option for increased quantity clause. Subsequent to bid opening, requirement for additional 80 cranes arose, and agency proposes to make award for total of 200 cranes based on referenced clause. Protest against such award filed more than 10 working days after basis for protest was known is untimely and will not be considered on its merits.

Invitation for bids (IFB) No. DSA700-77-B-1611 was issued on July 20, 1977, by the Defense Logistics Agency (DLA) for 60 cranes. The quantity was later increased by amendment to 120 cranes. The IFB included an "Option for Increased Quantity" clause (clause J01) and provided in clause D03 that a bidder's option price would be a factor in the evaluation of the bid for award.

The four bids received were opened on August 26. Although Little Giant Crane & Shovel, Inc. (Little Giant), was the low bidder on the basic quantity of cranes, it was advised shortly after bid opening that award would be made to another bidder. By telegram to DLA of September 22, Little Giant protested the proposed award. DLA denied the protest by letter of October 11 on the following basis:

"* * * [S]ubsequent to bid opening, a requirement was received for 80 additional cranes which will be awarded under the option in Clause J01 of the subject invitation.

"In accordance with Clause D03 of the invitation, the additional quantity to be awarded under the option clause must be considered in the evaluation of bids and since you bid a higher unit price on the option quantity you are not the lowest bidder on the total quantity to be awarded."

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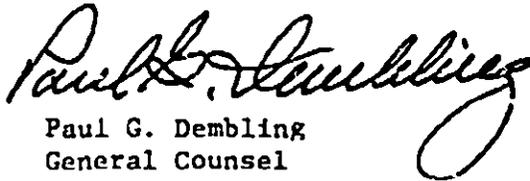
Little Giant filed a protest in our Office on November 4, contending that the IFB's option clause improperly failed to include a specific quantity of cranes that could be required thereunder and to establish a definite delivery schedule in the event the clause was exercised. Little Giant also argued that award of a contract for 200 cranes, when the basic quantity for which bids were solicited was only 120, would not be proper. The protester suggests that the IFB be canceled and a solicitation for 200 cranes be issued.

Section 20.2(b) of our Bid Protest Procedures, 4 C.F.R. part 20 (1977) (Procedures), provides in pertinent part:

"(b)(1) Protest based upon alleged improprieties * * * which are apparent prior to bid opening * * * shall be filed prior to bid opening * * *.

"(2) In cases other than those covered in subparagraph (1) bid protests shall be filed not later than 10 [working days] after the basis for protest is known or should have been known, whichever is earlier."

The alleged inadequacy of the option clause was apparent to Little Giant upon its receipt of the IFR. Since the matter was not protested prior to bid opening, the protest on that issue is untimely under section 20.2(b)(1) of our Procedures and will not be considered on its merits. In addition, Little Giant knew the basis for its protest that award for a quantity exceeding the basic quantity of 120 cranes would be improper on October 13, when it received DLA's October 11 letter denying its initial protest. Thus, the protest to our Office on that issue, filed on November 4, is untimely under section 20.2(b)(2) of our Procedures and will also not be considered on its merits.


Paul G. Dembling
General Counsel