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DECISION



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

FILE: B-189759

DATE: December 16, 1977

MATTER OF: Sabin Metal Corporation

DIGEST:

1. Sales contracting agency official orally advised protester that one of 284 items of scrap would be withdrawn from sale, and protester did not, therefore, bid on that item. However, amendment to withdraw item was never issued. Twenty-seven bids were received for item and award made to high bidder. Protest that in view of referenced advice award was improper is denied, since solicitation clearly warned bidders not to rely on oral statement or representation by any Government representative changing terms of solicitation.
2. Sales contracting officials' determination that scrap sale price represented fair return to Government will not be disturbed, since there has been no showing of abuse of their broad discretion to determine price reasonableness.
3. Protest that scrap item should have been included in previous sale, filed more than 10 working days after receipt of new solicitation selling item separately, is untimely and will not be considered on merits.

Surplus Property Sale No. 41-7312 was issued in June 1977 by the Defense Property Disposal Service of the Defense Logistics Agency (DLA) for the sale of 284 items of scrap. Bid opening was scheduled for July 20. On July 11, a determination was made to withdraw from the sale item 190, precious metals bearing scrap, due to certain "demilitarization requirements." Because of an administrative error, no amendment was issued to formalize that determination. However, in a telephone conversation on July 14, Sabin Metal Corporation (Sabin) was advised by the Precious Metals Operations manager that item 190 would not be sold. On the basis of that information, Sabin did not inspect or bid on the item.

It was discovered at the July 20 bid opening that an amendment withdrawing item 190 had not been issued. Twenty-seven bids were received for the item. The high bid of \$218,291.01 was submitted by EKCO Metals, Inc. (EKCO). On July 22, officials were advised that the demilitarization requirements were resolved, and award of item 190 to EKCO was recommended.

B-189759

Sabin filed a protest in our Office on August 1 against the award on the basis that the advice it received on July 14 from the Government representative misled the firm into not bidding on item 190. Sabin also suggests that the material sold was of greater value than the award price. Finally, Sabin argues that, in any case, rather than sell the item 190 material, it would be more advantageous for the Government to include such material in a recent sales contract for a similar item "now being processed," under which Sabin had been the successful bidder.

Paragraph 16 of the General Sale Terms and Conditions, incorporated by reference into the sale document, provided:

"ORAL STATEMENTS AND MODIFICATIONS.

"Any oral statement or representation by any representative of the Government, changing or supplementing the Invitation or contract or any Condition hereof, is unauthorized and shall confer no right upon the Bidder or Purchaser."

In view thereof, and since a written amendment was not issued to delete item 190 from the sale, the Government was not estopped from including item 190 in the sale. See also Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947).

Concerning the sale price, the record indicates that the Precious Metals Operations manager determined that item 190 had a "net worth to the Government of \$240,412.15," and recommended that the item should not, therefore, be sold for less than that amount. However, the recommendation was rejected by the responsible DLA officials, who could not determine how "firm" the net worth figure was. The determination whether a price is reasonable, and therefore acceptable, is basically a business judgment requiring the exercise of broad discretion. This determination is to be made by the contracting officials, and will not be disturbed by our Office absent a showing of a clear abuse of discretion. Cf. California Stevedore and Ballast Company, B-186873, January 24, 1977, 77-1 CPD 47. Notwithstanding the dispute within DLA as to the acceptability of EKCO's price of \$218,221.01, we have no basis to conclude that the ultimate decision that the price represented a fair return to the Government and, therefore, to award to EKCO was an abuse of discretion.

B-189759

In regard to Sabin's suggestion that the material should have been included in Sabin's recent sales contract, section 20.2(b)(2) of our Bid Protest Procedures, 4 C.F.R. part 20 (1977) (Procedures), provides:

"* * * 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."

Sabin knew that a sale of the subject material was being conducted upon its receipt of the sales solicitation in early July. Therefore, its protest on that issue, filed more than 10 working days thereafter, is untimely under section 20.2(b) and will not be considered on its merits.


Deputy Comptroller General
of the United States