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DECISION



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

P. L. ...
Page I

FILE: B-191840

DATE: July 5, 1978

MATTER OF: Arcwel Corporation

DIGEST:

1. "All or none" bid on Navy raft procurement, a total small business set-aside, is not non-responsive where IFB neither authorized nor prohibited "all or none" bid since ASPR § 2-404.5 is applicable and permits "all or none" bid in this situation. Neither do such bids violate policies to be served by small business set-asides.
2. Ship Repair Contracting Manual § 7-11 does not preclude "all or none" award in lot bid context and makes it clear that total award should be made to low bidder on all lots even when another bidder is low on one of the lots.
3. IFB note that "multiple awards are anticipated" does not serve to bind Government to make multiple awards. Prospective bidders should be on notice of possibility of "all or none" bid, both by absence of IFB provision prohibiting same and presence of IFB provision inviting bids on all lots as well as on individual lots.

Invitation for bids (IFB) N62472-78-B-1608 was issued by the Naval Facilities Engineering Command, Davisville, Rhode Island, for bids on a total requirement of 43 waste oil rafts. The schedule listed seven items. Nos. 0001 through 0006 consisted of specified numbers of rafts to be delivered f.o.b. destination to six different naval facility locations. No. 0007 was a first article test and report. Bids were invited on all seven items, or on any one item No. 0001 to 0006 plus item No. 0007, or on any combination of item Nos. 0001 through 0006 plus item No. 0007. The procurement was a total small business set-aside.

Bids were received and opened on March 29, 1978. A total of six companies submitted bids which were determined to be responsive, on various items and combinations of items. Arcwel Corporation (Arcwel) submitted the low bid on item No. 0006 (plus item No. 0007) in the amount of \$358,642.97. Tacoma Boat Building Co., Inc. (Tacoma), submitted an "all or none" bid for all seven listed items in the amount of \$2,969,436. After evaluation, the Navy concluded that of the 16 possible item combinations Tacoma's "all or none" bid was low. Accordingly, the contract was awarded to Tacoma on April 21, 1978.

Arcwel timely filed a protest with our Office by letter dated April 28, 1978. Arcwel contends that the Navy should have awarded it the contract for item No. 0006 based on its low bid. Arcwel seems to contend that Tacoma's bid should either have been rejected in toto as nonresponsive because of its "all or none" condition, pursuant to Armed Services Procurement Regulation (ASPR) § 2-404.2(d) (1976 ed.); or that the "all or none" clause should have been deemed objectionable and Tacoma should have been requested to delete it from its bid, pursuant to ASPR § 2-404.2(d)(vi) (1976 ed.), in which case Tacoma could still have been awarded the contract for item Nos. 0001 through 0005 (plus 0007), on which its bid would have remained low.

Arcwel's argument is based on the premise that "all or none bids are peculiarly unsuited to those small business set-asides which are also 'lot bid' contracts." Arcwel submits that its position is specifically supported by the ASPR, the Ship Repair Contracting Manual (Repair Manual) and the terms of the IFB at issue.

ASPR § 2-404.5 (1976 ed.) (relating to "All or None Qualifications") provides that:

"Unless the invitation for bids so provides, a bid is not rendered non-responsive by the fact that the bidder specifies that award will be accepted only on all, or a specified group, of the items included in the invitation for bids."

ASPR § 1-706.5(b) (1976 ed.) (concerning "Total Set-Asides") provides, in relevant part, that:

* * * * Small Business Restricted Advertising, including awards thereunder, shall be conducted in the same way as prescribed for formal advertising in Section II except that bids and awards shall be restricted to small business concerns."

Thus, ASPR § 2-404.5 (1976 ed.) is specifically applicable to the subject award, and under that section, award to a bidder submitting an "all or none" bid is perfectly acceptable. Therefore, Arcwel's argument that "all or none" bids are contrary to the general policies to be served by small business set-asides is also without merit.

In addition, our Office has uniformly held that where an IFB permits multiple awards an "all or none" bid lower in the aggregate than any combination of individual bids may be accepted by the Government even though a partial award could be made at a lower unit cost. George C. Martin, Inc., 55 Comp. Gen. 100 (1975), 75-2 CPD 55; Oregon Culvert Co., Inc., B-183406, June 12, 1975, 75-1 CPD 358; General Fire Extinguisher Corporation, 54 Comp. Gen. 416 (1974), 74-2 CPD 278. We have also upheld the awards of contracts to bidders who have submitted "all or none" bids for total small business set-aside procurements. See B-176433, August 16, 1972.


Arcwel's suggestion that Tacoma should have been requested to delete the "all or none" condition from its bid pursuant to ASPR § 2-404.2(d)(vi) is based on its misunderstanding of that provision. The provision is specifically limited to bid conditions which do not go to substance; a condition affecting quantity, such as in the instant case, is specifically defined therein as going to substance. Also, the provision relates to "objectionable conditions" and, as indicated above, there is nothing objectionable about this "all or none" condition in response to the subject IFB.

Arcwel contends that the Repair Manual (1976 ed.) discussion of lot bidding in § 7-11 supports its position. Arcwel further argues that example 2 in § 7-11(c) of the Repair Manual (1976 ed.) "clearly indicates that a low bid in a 'lot-bid' contract requires a mandatory award." The Repair Manual is of questionable applicability since the subject IFB was for construction delivery and testing of new waste oil rafts, while the Repair Manual foreword states that it "is to be complied with in the placement of job orders for the repair, overhaul, and alteration of Naval Ships and Craft * * *."

In any event, § 7-11(a) of the Repair Manual (1976 ed.) does provide that "the primary purpose of lot bidding is to enable smaller yards to participate in the performance of specific portions of the work in cases where the scope of the total job would be beyond their individual capacities." However, § 7-11(a) also states that when lot bidding is utilized, "An additional lot, consisting of the total procurement shall also be included in the solicitation." (Emphasis added.) Moreover, the example cited by Arcwel in § 7-11(c) is actually used to show that a procurement award must be given to a bidder whose bid for all lots is lower than combined bids by separate lot--even when a competing bid on one of the separate lots is lower. Thus, this example specifically mandates the award to Tacoma in the instant bid situation and precludes award to Arcwel.

Arcwel contends that the IFB strongly indicates favorable receipt of lot bids by virtue of the note on page E-2 therein that "multiple awards are anticipated." This statement does not constitute a promise or guarantee that there will be multiple awards; the fact that "all or none" awards were not prohibited by the terms of the IFB, plus the inclusion in the IFB of a specific solicitation of bids for "all items," should have served to provide sufficient warning to a potential bidder that award might be made to an "all or none" bidder.

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States