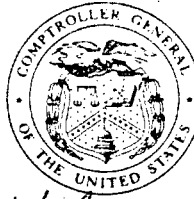


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DECISION



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

[Protest of VA Contract Award]

FILE: B-200845

DATE: November 28, 1980

MATTER OF: Com-Tran of Michigan, Inc. DLG05607

DIGEST:

1. Award of contract pursuant to advertising statutes must be on same terms that were offered to all bidders. Therefore, where IFB provides that aggregate award for three groups of transportation services is contemplated, multiple awards would not be proper even though they would result in lower overall cost. However, if multiple awards also would meet Government's minimum needs, IFB should be canceled, since higher cost aggregate award would be improper.
2. Where IFB states general licensing requirement, lack of particular state license is not bar to award of contract.

This decision is in response to an order issued by the United States District Court for the Eastern District of Michigan suspending proceedings in a suit by Com-Tran of Michigan, Inc. against the United States and the Veterans Administration (VA) (Civil Action No. 80-73663) while Com-Tran pursues a bid protest filed with the VA in the same matter. Com-Tran had requested the court to enjoin the proposed award of a contract by the VA to Meda Care Ambulance Service, Inc. under invitation for bids (IFB) 553-1-81 to furnish transportation to VA beneficiaries. The VA has forwarded the bid protest to our Office for determination pursuant to Federal Procurement Regulations (FPR) § 1-2.407-8(b) (1964 ed.).

DLG0560

DLG05608

The IFB solicited bids for three "Groups" of services: Group A, ambulance service; Group B, station wagon or commercial sedan service; and Group C, carry-all or econo-van service. Bidders were to enter on the Schedule a bid price for each Group (as well as prices for sub-items

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within each Group), and a "total aggregate" price. The IFB's "Special Conditions" provided:

"1. AGGREGATE AWARD: It is contemplated that Groups, A, B AND C 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 by 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. For this purpose, the cost of awarding and administering each additional contract is estimated to be \$25.00. Multiple awards will not be made unless there is a resultant savings of more than \$25.00."

The bids received were:

	<u>Group A</u>	<u>Group B</u>	<u>Group C</u>	<u>Total</u>
Com-Tran	No bid	\$182,000	\$63,744	\$245,744 (B&C only)
Meda Care	\$ 85,031	\$ 97,795	\$95,560	\$278,386
E.M.T.S. Ambulance Service	\$102,473.50	\$119,750	\$88,100	\$310,323.50

The VA proposes to award a contract for the three Groups to Meda Care based on the firm's low aggregate bid.

Com-Tran contends that because the VA is required to award contracts to the low responsive, responsible bidders, ✓ FPR § 1-2.404-1, and because the award of multiple contracts here (Groups A and B to Meda Care; Group C to Com-Tran) would save the VA money over an aggregate award to Meda Care, the VA must award a contract for Group C to Com-Tran. Com-Tran asserts that multiple awards for the same services were made in 1977 and 1978 under invitations with a similar "aggregate

award" provision notwithstanding that in 1977 four aggregate bids were received and in 1978 several firms bid on more than 50 percent of the items in the Groups.

Com-Tran also contends that in any event Meda Care should not be considered eligible for award because the firm allegedly is not licensed by the State of Michigan, where the contract would be performed, to provide the services required in the IFB.

It is well-established that the award of a contract pursuant to the advertising statutes must be made on the same terms that were offered to all bidders. See 41 Comp. Gen. 593 (1962); 37 id. 524, 527 (1958); FPR § 1-2.301(a). Here, bidders were clearly advised in the IFB's Special Conditions that an aggregate award was contemplated, and that an award on an item by item basis would be considered only if an aggregate bid on all three Groups was not received.

Accordingly, and notwithstanding that under the circumstances an aggregate award will cost the Government more than multiple awards would, if award is to be made under this solicitation, it must be made to the aggregate bidder. 48 Comp. Gen. 381 (1968); The Manbeck Bread Company, B-190043, October 5, 1977, 77-2 CPD 273. The protest is denied to that extent.

We do, however, have some question as to the propriety of any award under the solicitation. Generally, a solicitation provision requiring that one aggregate award be made in lieu of multiple awards may be viewed as contrary to the requirement to maximize competition. 52 Comp. Gen. 47 (1972); B-179253, October 4, 1973. Of course, an agency's needs may mandate that a single award, rather than multiple awards, be made, and when an agency's determination to that effect has a reasonable basis a single award is not legally objectionable. Jones & Guerrero Co., Inc., B-192328, October 23, 1978, 78-2 CPD 296. For example, in Jones & Guerrero we found a single award provision to be proper because the agency reasonably found that a lower overall cost would result from one aggregate award. Where, however, no reasonable basis exists for precluding multiple awards, an aggregate award at a price higher than could be obtained from making multiple awards would be improper. B-179253, supra. In this connection, we have stated that considerations of centralized management by one contractor and of contract administration are not in themselves sufficient to justify an aggregate award if a savings could be realized by making multiple awards. See 47 Comp. Gen. 233 (1967); Roy's Rabbitry, B-193628, May 2, 1979, 79-1 CPD 305. When solicitations contain an unjustified provision requiring award on an aggregate basis, the proper course of action is rejection of all bids,

cancellation of the solicitation, and issuance of a revised solicitation without the improper provision. Roy's Rabbitry, supra.

Here, the VA has not indicated its justification for the aggregate award provision. It does report that the fiscal year 1980 contract for the services was awarded on an aggregate basis to the only firm that bid on all three Groups, and that in fiscal year 1979 multiple awards were made because no aggregate bids were received. With respect to the 1977 contract referenced by Com-Tran, the VA informally advises that the solicitation there also invited bids for the same three Groups of services, but did not state that aggregate award was contemplated as did the 1979 and 1980 ones. The VA states that an aggregate award nonetheless was made in 1977 because the bidding results showed that it was in the Government's best interest, although the contract subsequently was terminated for default and the services were reprocured through three separate solicitations and awards. The VA also informally advises that two solicitations were issued in 1978, one for ambulance service and one for econo van and commercial car service; that the econo van/commercial car invitation did not state that the VA contemplated an aggregate award; and that two contracts were awarded thereunder. While this indicates that the VA has made aggregate awards in past, it does not indicate why an aggregate award restriction was necessary.

We also note that the VA solicitation's award provision could be read as implying that while a single award for all three Groups would be preferable, multiple awards also would be acceptable if the VA had no alternative, i.e., "in the event an aggregate bid is not received for all items * * *."

Accordingly, if in fact either an aggregate award or multiple awards here would meet the VA's minimum needs, an award to Meda Care at a cost almost \$32,000 greater than an award as suggested by Com-Tran would be improper. If that is the case, the solicitation should be canceled.

This issue, however, has not been directly addressed by the VA or the protester, and in light of the judicial proceedings and the court's request for our opinion within a specific time period, we did not request a report from the VA on this issue. Therefore, we cannot reach any firm conclusion on the matter. We would anticipate that whatever justification the VA has for using the aggregate award provision will be presented to the court.

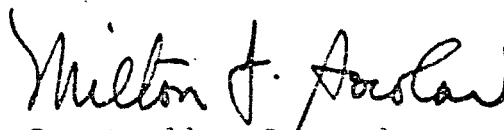
Regarding the propriety of an award to Meda Care in view of the firm's alleged lack of a Michigan license to perform the contract services, paragraph 2 of the invitation's Special Conditions required that the successful bidder meet "all requirements of Federal, state or city codes regarding operations of this type of service."

We have recognized a distinction between a general requirement that a bidder or contractor comply with any applicable licensing requirements and a requirement that a bidder have a particular license. In the latter case, the requirement is one specifically established for the procurement and compliance therewith is a matter of bidder responsibility. In the former case, however, a bidder's failure to possess a particular license is not in itself a bar to award, since the need for possession of such a license is not imposed as a prerequisite to award but rather is treated as a matter between the bidder and the licensing authority. B&W Stat Laboratory, Inc., B-195391.3, March 10, 1980, 80-1 CPD 184.

We have consistently viewed the type of provision included in this solicitation as imposing only a general requirement for complying with whatever licensing requirements might be applicable. See, e.g., What-Mac Contractors, Inc., 58 Comp. Gen. 767 (1979), 79-2 CPD 179; New Haven Ambulance Service, Inc., 37 Comp. Gen. 361 (1978), 78-1 CPD 225. Thus, Meda Care's alleged lack of the state license does not preclude the firm from being awarded the contract. In this connection, we also note that on October 10 the VA was informed by the Michigan Public Service Commission that the Commission "will view favorably the application of any carrier who applies for a license to transport patients for a VA hospital, irrespective of need if the carrier otherwise qualifies."

The protest on this issue is denied.

For the


Comptroller General
of the United States