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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D. C. 20548

[Protest Against Proposed Award of VA Contract]

FILE: B-200616

DATE: January 28, 1981

MATTER OF: Blue Bird Coach Lines, Inc. *DLG 05938*

DIGEST:

Award of contract pursuant to advertising statutes must be on same terms that were offered to all bidders. Therefore, to extent that IFB for transportation services permits aggregate award for all requirements, multiple awards would not be proper even though aggregate award would cost Government more. However, where agency indicates that multiple awards on future solicitations for same transportation services could result in savings to Government, IFB should be canceled because higher cost aggregate award would be improper.

Blue Bird Coach Lines, Inc. (Blue Bird), *DLG 05939* protests the contemplated aggregate award to National Ambulance & Oxygen Service, Inc., for all contract items under invitation for bids (IFB) No. 513-81-4 issued by the Veterans Administration Medical Center, Batavia, New York (VA). The IFB was for furnishing ambulance and wheelchair van transportation services at the VA medical center.

Blue Bird contends that the IFB commingled dissimilar transportation services and that the VA compounded this alleged improper commingling by including an ambiguous aggregate award section. Blue Bird believes that this section should be properly interpreted as to the right and duty of the VA to award a contract to it for nonambulance transportation services. Alternatively, Blue Bird argues that the solicitation be canceled and the requirements be readvertised with a clear segregation of ambulance and nonambulance transportation services.

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The IFB contained an aggregate award section which stated:

"It is contemplated that items number 1 through 5 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 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 \$100.00. Multiple awards will not be made unless there is a resultant savings of more than \$100.00."

The VA questions the timeliness of Blue Bird's protest because it believes the protest is based upon alleged improprieties appearing in the IFB. Therefore, the agency contends that under section 20.2(b)(1) of our Bid Protest Procedures (4 C.F.R. § 20.2(b)(1) (1980)) the protest should have been filed prior to bid opening.

In response, Blue Bird argues that prior to bid opening no clear impropriety existed. In Blue Bird's opinion, the IFB impropriety as to award procedures became apparent only after bid opening when the VA indicated to the company that it would not accept the company's low bid on the nonambulance transportation services because of the agency's interpretation of the alleged ambiguous aggregate award section.

We do not agree with the VA that the matter should be viewed as being based upon an apparent impropriety in the IFB. Rather, Blue Bird is contending that the IFB permitted multiple awards when at least one bidder submitted a bid on only a portion of the solicitation items. Consequently, Blue Bird's protest is timely.

See Carolina Parachute Company, B-198199, July 30, 1980, 80-2 CPD 79.

Three bids were submitted under the IFB with two of the bids for all the solicitation items. Blue Bird submitted on only the nonambulance transportation services because its business did not provide ambulance transportation services. However, as Blue Bird points out, its bid on the nonambulance transportation service items was the lowest resulting in a savings to the Government of \$1,778.75. Blue Bird also points out that the nonambulance transportation services represent 85 percent of the total IFB transportation requirements.

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); Federal Procurement Regulations 1-2.301(a) (1964 ed. amend. 178). The first sentence of the aggregate award clause explicitly states that a contract would be awarded to the bidder submitting the lowest bid on all items. If the second sentence is read in conjunction with the first sentence, it is clear that the clause gave the VA the option to make multiple awards if none of the bidders submitted a bid on all the solicitation items.

Accordingly, and notwithstanding the fact that under the circumstances an aggregate award will cost the Government more than multiple awards, if award is to be made under the IFB, it must be made to the lowest aggregate bidder. The Manbeck Bread Company, B-190043, October 5, 1977, 77-2 CPD 273. Therefore, the protest is denied to that extent.

Nevertheless, we have recently held in a protest involving a VA solicitation containing the same aggregate award clause that, if either an aggregate award or multiple awards would meet the VA's minimum needs, the solicitation should be canceled where an aggregate award results in a higher cost to the Government. Com-Tran of Michigan, Inc., B-200845, November 28, 1980, 80-2 CPD 407. We stated that unless a 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.

We also noted that, because the issue had not been directly addressed by either the VA or the protester, the VA had not indicated its justification for the aggregate award provision.

In Com-Tran, we did not request a report from the VA on this issue because of pending judicial proceedings and a court request for our opinion within a specific time period. Consequently, our decision did not reach any firm conclusion on the matter. Since our decision, the VA has informed us by letter dated December 11, 1980, that no award would be made under the Com-Tran solicitation and that a new solicitation would be issued. In its December 11, 1980, letter, the VA stated:

"The Contracting Officer would have to justify making an award on the aggregate bid, in this instance, inasmuch as such award would be excessive in cost. Such justification is just not available, inasmuch as multiple awards on future solicitations could result in considerable savings to the Government and meet our requirements in serving the veteran."

Like the solicitation here, the solicitation in Com-Tran was for ambulance and nonambulance transportation services at a VA medical center. Consequently, in view of the fact that the VA has indicated to us that multiple awards on "future solicitations" could result in savings to the Government, we conclude that the agency also has no justification here for making an aggregate award. Accordingly, we recommend that the IFB be canceled and a new solicitation be issued for the requirements.


for the Comptroller General
of the United States