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McDonnell
Proc. J. F.

DECISION



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

FILE: B-201848

DATE: August 3, 1981

MATTER OF: Norcoast-BECK Aleutian

DIGEST:

IFB permitted separate awards on three schedules where low aggregate bid exceeded available funds. Cognizant agencies, after receipt of low aggregate bid in excess of available funds, increased amount after bid opening. Award to low aggregate bidder was unjustified where a significantly lower bid on one schedule was rejected. Portion of contract pertaining to that schedule should be terminated for convenience, if feasible, and awarded to low bidder on that schedule.

Norcoast-BECK Aleutian (Norcoast) protests the award of schedule "A" to Hoffman Construction Company (Hoffman) under Army Corps of Engineers invitation for bids (IFB) No. DACA85-81-B-0001.

The IFB established three schedules and a combined schedule for three separate construction projects at Shemya Air Force Base, Alaska. The bid evaluation clause of the IFB stated in part:

"1. AWARD: Award will be made to the low responsive, responsible bidder on Combined Schedules A, B, & C if sufficient funds are available for each of the three projects. * * * If the amount offered, by the low bidder on the combined schedule, for any of the projects exceeds the funds available for that project, the combined schedule will not be awarded and only then will bids on

[Protest of Alleged Manipulation of Funds]

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individual schedules be evaluated. If individual bids are evaluated, then award will be made on Schedules A, B, and C separately or together in any combination that is in the best interest of the Government."

To determine whether funds were available, the IFB set forth a formula prorating certain bid prices among the three schedules.

The amount programmed for schedule "A" from the 1981 military construction appropriation for Shemya Air Force Base was \$1,550,000. Hoffman's bid on schedule "A" was \$1,751,000 and its evaluated bid on that schedule was \$1,817,753.33. Norcoast's bid on schedule "A" was \$1,354,850, approximately \$400,000 less than Hoffman's. Hoffman was the low bidder on the other two schedules.

After bid opening, the Corps contracting officer, in conjunction with the Alaska Air Command, revised upward the funds available for schedule "A" under the provisions of Air Force Regulation (AFR) 89-1 (June 20, 1978) which provides as follows:

"(4) Before award:

(a) For bases having more than one MCP [military construction project] in a particular fiscal year, AFRCE [Air Force Regional Civil Engineer] can authorize award of a project whose CWE [current working estimate] does not exceed 125 percent of the PA [programmed amount] if the station authorization limitation * * * is not exceeded."

The revised programmed amount for schedule "A" was \$1,937,500, which was in excess of Hoffman's evaluated bid. The Corps thereafter determined that Hoffman's bid on schedule "A" was within the funds available and awarded it the contract for schedules "A," "B," and "C" as the low aggregate bidder.

Norcoast alleges that the Corps and the Air Force improperly manipulated the funding for schedule "A" subsequent to bid opening so as to bring Hoffman's bid within the funds available for that schedule, thus avoiding evaluation of individual schedule bids and award to Norcoast of schedule "A."

The Corps responds that, under previous GAO decisions and under statute, there is authority to reallocate funds during the course of a procurement. Once the reprogramming took place, the Corps argues, funds were available, and the bid evaluation clause required a single award on the combined schedule, notwithstanding the award of schedule "A" at a significantly higher price. Finally, the Corps intends to avoid using this bid evaluation clause in the future to prevent a similar situation from arising.

For the reasons stated below, the protest is sustained.

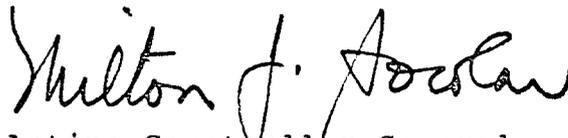
Our Office has consistently held that the language of 10 U.S.C. § 2305(c) (1976), requiring award to the responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Government, mandates award on the basis of the most favorable cost to the Government, assuming responsiveness of the bid and responsibility of the bidder. Tennessee Valley Service Company, B-188771, July 20, 1977, 77-2 CPD 40; Mark A. Carroll and Sons, Inc., B-194419, November 5, 1979, 79-2 CPD 319. The award of schedule "A" to Hoffman was not at the most favorable cost to the Government. Furthermore, the bid evaluation clause specifically permitted multiple awards in the best interest of the Government, where, as here, the low aggregate bid exceeded available funds on an individual schedule.

As mentioned above, funds became available for schedule "A" only because of the reprogramming under the above AFR. However, the reprogramming was authorized under the AFR (89-1(4)(b)), in our view to take advantage of rather than reject a reasonably priced low bid.

In support of its action, the Corps cites H. M. Byars Construction Co., 54 Comp. Gen. 300 (1974), 74-2 CPD 233; Rock, Inc., B-186961, November 9, 1976, 76-2 CPD 394; and Praxis, Ltd., B-186157, August 10, 1976, 76-2 CPD 146. In those cases, the bid schedule consisted of a base bid and certain alternatives that increased the scope of work. Funding was increased after bid opening, enlarging the scope of work to be awarded, which resulted in a different low bidder since separate awards were not permitted. We held in each case that the agency was entitled to rely upon the additional funds in making an award to the responsible bidder with the lowest responsive bid on the increased work. In contrast, here, the Corps and the Air Force exercised the discretion to make funds available not to award increased work to a low bidder, but rather to award the same work to other than the low bidder. Therefore, these cases do not support the Corps' position. The agencies' actions did not result in an award on the basis of the most favorable cost to the Government.

We conclude that Norcoast should have been awarded the schedule "A" contract. However, the Corps advises us that approximately 25 percent of the work on schedule "A" has been completed. Thus, we recommend that the Corps consider the feasibility of immediately terminating the schedule "A" portion of the contract and awarding the remainder of the work to Norcoast.

Protest sustained.



Acting Comptroller General
of the United States