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DECISION

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

FILE: B-200965.2

DATE: August 12, 1981

MATTER OF: Schindler Haughton Elevator Corporation - Reconsideration

DIGEST:

Request for reconsideration is denied since prior decision is not shown to have been founded on error of law or fact.

Schindler Haughton Elevator Corporation (Schindler) requests that we reconsider our decision denying its protest against the cancellation after bid opening of invitation for bids 583-18-81 (IFB-1) and the issuance of invitation for bids 583-23-81 (IFB-2) by the Veterans Administration (VA). Schindler Haughton Elevator Corporation, B-200965, April 23, 1981, 81-1 CPD 315.

We affirm the decision.

IFB-1 involved two items: item 1 for the maintenance of several elevators, and item 2 for the completion of repairs as indicated in an inspection report and the supply of labor, materials and equipment necessary to bring the elevators up to certain code standards. The solicitation included the following award clause:

> "It is contemplated that items 1 (a,b,c) thru 2 will be awarded to the * * * 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 make award by item, including multiple awards]."

Schindler bid on both items. The other bidders responded only to item 1 because they had not received the inspection report before bid opening. Schindler was the low bidder on both items, but the contracting officer rejected all bids and canceled IFB-1 because the inspection report had not been received by all of the bidders. Before the issuance of IFB-2, however, the VA decided

that item 2 was not needed, and issued IFB-2 including only the item 1 work. Fairfall Elevator Inc., one of the bidders on IFB-1, was the low bidder.

Schindler protested that the VA in effect conducted an auction by canceling IFB-1 and resoliciting the same requirement in IFB-2. In denying the protest, we pointed out that an IFB provision requiring an aggregate award instead of multiple awards generally conflicts with the requirement to maximize competition. Thus, the use of such a provision is proper only when an agency's needs mandate a single award. We stated:

> "We believe the situation here is analogous to situations where aggregate award provisions are improperly used. At the time it issued the first solicitation, the VA did not need the repair work under item 2; nonetheless, by virtue of the aggregate award provision it required bidders to consider the possibility that only one award for both items 1 and 2 would be made. This could have adversely affected competition by discouraging from bidding potential bidders which would have otherwise submitted a bid only for item 1. This appears to be a distinct possibility here, since the VA advises that the item 2 repair work included the replacement of hoist ropes on two elevators which is very costly. This obviously could have discouraged certain firms, particularly small business concerns unable to or unwilling to bear the expense for the repair work, from bidding."

We did note, nonetheless, that the inclusion of item 2 in IFB-1 showed poor planning on the part of the agency.

In the request for reconsideration, Schindler first contends that our concern with prejudice to other bidders if Schindler was awarded a contract for item 1 under IFB-1 was unfounded. The basis for that position is the firm's view that "the original IFB, provided that an aggregate bid award was only a possibility," i.e., that IFB-1 clearly advised bidders that either an aggregate award or multiple awards might be made. Thus, Schindler argues, firms that bid or considered bidding did so on the basis that a separate award might be made for item 1, and therefore would not be prejudiced by award to Schindler under IFB-1.

While we recognize that the award clause in issue did advise bidders that separate awards might be made, we view the clause as stating substantially more than just that "an aggregate bid award was only a possibility." In two protests involving the same clause, Blue Bird Coach Lines, Inc., B-200616, January 28, 1981, 81-1 CPD 51 and Com-Tran of Michigan, Inc., B-200845, November 28, 1980, 80-2 CPD 407, we held that the clause actually commits the VA to an aggregate award if a bid on all items is received, and thus gives the VA the option to make multiple awards only if no bidder submits a bid on all of the items. It is well-established that an award must be made on the same terms that were offered to the bidders. Thus, in both of the cited cases we pointed out that since a bid on all items was received, multiple awards would be improper even if an aggregate award would cost the Government more.

Moreover, our concern that award to Schindler under IFB-1 would harm the competitive bidding system was borne out by the responses to IFB-2. As we further stated in the decision:

> "* * * we note that in response to the second invitation three additional bids (including bids from two small business concerns), aside from those of Fairhall, Schindler and Montgomery, were received. Consequently, we do not think the initial solicitation resulted in the maximum practicable competition required by FPR [Federal Procurement Regulations] 1-1.301-1 (1964 ed.), and we therefore believe that the contracting officer properly canceled it. * * *"

Accordingly, we remain of the view that award to Schindler for item 1 under IFB-1 would be improper.

Schindler's second contention is that our Office improperly used information to justify the April 23 decision which was not included in any of the documentation furnished to our Office by the parties to the protest. The information referred to is the notation in the decision that "the Veterans Administration advises that the item 2 repair work included the replacement of hoist ropes on two elevators which is very costly," which we said obviously could have discouraged firms unwilling to bear the expense of the repair work from bidding.

The information was relayed to us in a telephone conversation with the VA. Essentially, it reflects a fact which the parties to the protest knew and accepted -- Schindler does not dispute its substance. In retrospect, we believe we should have made the protester aware of the VA's position in this respect, but since the accuracy and relevancy of the information is not disputed, we see no impropriety in our use of the information.

Since Schindler has not demonstrated any errors of law or fact in our earlier decision to warrant reversal, that decision is affirmed. 4 C.F.R. § 21.9 (1981).

Milton J. Socolar

Acting Comptroller General
of the United States