

DECISION



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

FILE: B-209016

DATE: February 8, 1983

MATTER OF: The Interior Steel Equipment Co.

DIGEST:

1. "Method of award" provision of solicitation did not specifically preclude award based on combination of furniture items being procured where provision did not specifically state that each item was to be awarded to lowest offeror on that item and did not state that "offers on combinations of items will not be considered." Phrase in provision regarding award on "item-by-item" basis is not inconsistent with evaluation intent that would consider possibility of financial advantage arising out of single award for combination of items.
2. Protests based upon alleged improprieties apparent on the face of a solicitation must be filed prior to the closing date for the receipt of proposals.
3. Where procurements are small business set-asides, combination offers are proper as long as offers and awards are restricted to small business concerns.
4. The Government has no duty to eliminate a competitive advantage of an offeror unless the advantage results from a preference or unfair action by the agency.

The Interior Steel Equipment Co. (Interior Steel) protests the award of a contract to Medart, Inc., under request for proposals (RFP) No. FNP-C6-1268-N-7-7-82 issued by the General Services Administration (GSA). The procurement was for definite quantities of eight miscellaneous furniture items, including delivery costs, for various geographic zones. The items were to be awarded under a small business set-aside. A substantial part of the contract was

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awarded to Medart based on its combination offer (for six of the eight items to be awarded). However, Medart's price on one of the awarded items was not as low as Interior Steel's price on that term.

Interior Steel contends that the solicitation was ambiguous; alternatively, the company contends that the solicitation clearly precluded combination offers. The company also argues that combination offers were not proper for this procurement because Medart possessed a competitive advantage under this type of offer. Finally, Interior Steel argues that GSA conducted the procurement in a confusing manner. We deny the protest in part and dismiss it in part.

Interior Steel bases its argument on combination offers on analysis of two clauses in the solicitation. The "Method of Award" clause states "[a]ward will be made on an item-by-item by zone basis to the lowest responsive offeror up to their stated quantity." Clause 64 of the solicitation adds that "[u]nless awards in the aggregate are specifically precluded in this solicitation, the government reserves the right to evaluate offers and make awards on an 'all or none basis.'" Interior Steel contends that the "Method of Award" clause and clause 64 are in "serious conflict." To the extent that Interior Steel challenges the alleged, apparent ambiguity of the solicitation, its protest is untimely. Our Bid Protest Procedures require that protests based upon alleged improprieties apparent in a solicitation are to be filed prior to the closing date for the receipt of proposals. See 4 C.F.R. § 21.2 (b)(1) (1982). The closing date for proposals was July 12, 1982, for one item and July 7 for all other items. Interior Steel did not protest until September 10, 1982, and, therefore, its protest is dismissed to the extent it is based upon the apparent ambiguity of the solicitation.

As to the interpretation of the above "Method of Award" clause, both GSA and Interior Steel suggest that our decision in 42 Comp. Gen. 415 (1963), which involved a similar award clause, is controlling. In the cited decision, the award clause provided that "award will be made on lot basis only." We concluded that the quoted language was not the equivalent of "award will be made of each lot to the lowest bidder on that lot and bids on combinations of lots will not be considered." Therefore, we held that a low, combination bid should have been considered.

GSA argues that the wording of the "Method of Award" clause is substantially similar to that found in the cited case and that, therefore, an award on a combination basis was not, in the words of clause 64 of the IFB, "specifically precluded." Interior Steel, on the other hand, argues that the wording in this clause specifically precludes the award made here. We agree with GSA's interpretation.

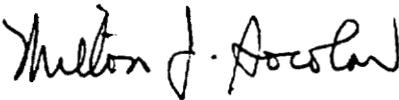
The "Method of Award" clause does not specifically state that each item (or each zone of each item) is to be awarded to the lowest offeror for the particular item or zone. The phrase "item-by-item" in that clause is not inconsistent with an evaluation which would consider the financial advantage of either individual item awards or a single combination award, the combined price of which could be determined only by adding the prices "item-by-item." Moreover, the "Method of Award" clause did not specifically state that "offers on combinations of items will not be considered." Consequently, we conclude that GSA was authorized to award to Medart based on the company's combination bid.

Interior Steel's other contentions are similarly unfounded. We have held that even where procurements are small business set-asides, as in this case, "all or none" offers, or combination offers, are proper as long as offers and awards are restricted to small business concerns. Arcwel Corporation, B-191840, July 5, 1978, 78-2 CPD 8. Also, even if Medart had a competitive advantage because of its alleged production capabilities, that advantage did not result from any unfair Government act. It is well settled that the Government has no duty to eliminate a competitive advantage of an offeror unless the advantage results from a preference or unfair action by the agency. Stanley and Rack, B-204565, March 9, 1982, 82-1 CPD 217. Therefore, if Medart does have a competitive advantage, it is of no concern in this protest.

Finally, Interior Steel alleges that there was confusion in the conduct of this procurement. Specifically, the company alleges that GSA "completely changed" the specifications only 2 days before the "best and final" offer date, which was on July 30, 1982. Interior Steel says this change caused the company to "make a discouraged two-day

effort to prepare our final bid." Interior Steel did not protest this specification change, however, until well after the July 30 date. Therefore, this ground of protest involving an alleged solicitation defect is untimely filed (see 4 C.F.R. § 21.2 (b)(1) (1982)) and will not be considered.

We deny the protest in part and dismiss it in part.

for 
Comptroller General
of the United States