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DECISION



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

FILE: B-215830.2; B-215830.3 **DATE:** February 14, 1985

MATTER OF: A to Z Typewriter Co.; Allen Typewriter Co.

DIGEST:

Although an invitation for an indefinite-quantity, requirements contract failed to state expressly that each unit price would be multiplied by the estimated quantity for evaluation purposes, award may be based on such an evaluation since the government's needs will be met and no bidder has made a persuasive showing that it would be prejudiced.

A to Z Typewriter Co. (A-Z) protests the termination for convenience of its contract under invitation for bids (IFB) No. WFCG-G9-R-1082, issued by the General Services Administration (GSA). The termination resulted from a protest filed by Allen Typewriter Co. (Allen) alleging that GSA failed to adhere to the IFB's stated method of evaluation. The IFB, covering federal agency requirements for electric typewriter repair and maintenance in the National Capital Region, failed to state that GSA's computation of the lowest evaluated total price would include multiplying the offered unit price for each line item by the estimated quantity provided in the IFB for that item. A-Z was awarded a contract based on such a computation, whereas Allen would have been the low bidder if GSA merely had summed the unit prices irrespective of how often the services likely would be required.

We believe that GSA's award to A-Z was proper and should be reinstated. We therefore deny Allen's protest against the award and sustain A-Z's protest against the termination of its contract.

The solicitation covered two services--an annual maintenance call for each typewriter and repair services as required--for six different brand name groupings of typewriters in six geographic areas, all within Washington, D.C., and the vicinity. For each geographic area, the invitation provided a separate bid schedule containing a list of the six brands of typewriters next to which were

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spaces for bidders to submit a unit price for each of the two required services. (The prices had to be expressed as net percentage discounts, plus or minus, from preestablished prices the IFB provided.) Immediately following the bid schedules, the invitation contained estimates of the times each service would be required for each typewriter brand in each geographic area.

The IFB's Method of Award clause stated that award would be made in the aggregate (that is, for both the annual maintenance call and repair services) by brand name grouping within each geographic area. GSA evaluated bids by multiplying the unit price for each service in an area grouping (taking into account the offered discount) by the estimated quantity for the service and then adding the results. This method resulted in awards to bidders other than Allen under the area groupings for which Allen submitted prices.

Allen subsequently protested that the IFB never stated that awards would be based on more than merely adding the unit prices for the two required services in each area grouping, under which method Allen apparently would have been awarded a contract that A-Z obtained for two groupings. For example, in group 2 of service area 1 (IBM typewriters in southwest Washington, D.C.), adding A-Z's net prices per service call--\$6.65--and per maintenance call--\$21.25--yields \$27.90, while adding Allen's--\$14.70 and \$7.50--yields \$22.20. However, because 2,505 service calls, and only 25 maintenance calls, are anticipated, GSA, by extending the net unit prices, determined that the total cost of contracting with A-Z would be half that of contracting with Allen. Responding to Allen's protest, however, GSA concluded that the invitation was ambiguous regarding how bids would be evaluated and terminated for convenience the contracts for those area groupings under which merely summing the unit prices would have changed the results.

We appreciate GSA's concern about the solicitation's Method of Award clause. An invitation must clearly state the basis on which bids will be evaluated for award, and the agency's evaluation must conform to the stated method. Williams Elevator Co., B-210049, Sept. 15, 1983, 83-2 C.P.D. # 327. In addition, we have recognized that a properly constructed solicitation for an indefinite-quantity, requirements contract must state that the evaluation will include estimated quantities as a factor, North American Reporting, Inc., et al., 60 Comp. Gen. 64 (1980), 80-2 C.P.D. # 364, since any award in an advertised procurement must be made to the responsible, responsive bidder whose

offered price is lowest based on a measure of the total work to be awarded. Tennessee Valley Service Co.-- Reconsideration, B-188771, Sept. 29, 1977, 77-2 C.P.D. ¶ 241; Square Deal Trucking Co., Inc., B-183695, Oct. 2, 1975, 75-2 C.P.D. ¶ 206, aff'd, Nov. 14, 1975, 75-2 C.P.D. ¶ 303.

The mere fact that an invitation is deficient, however, does not preclude a valid award if the award would meet the government's needs and not prejudice the competition. GAF Corp., et al., 53 Comp. Gen. 586 (1974), 74-1 C.P.D. ¶ 68. We have consistently stated that where an IFB advises bidders of the anticipated quantity of services required, but fails to state expressly that prices will be evaluated based on the total amount the government anticipates paying under the contract, the agency may nonetheless proceed with an award on that basis absent a persuasive showing that bidders would be prejudiced. See Williams Elevator Co., B-210049, supra; Tennessee Valley Service Co.-- Reconsideration, B-188771, supra; Square Deal Trucking Co., Inc., B-183695, supra.

Evaluating low total cost to the government, which led to the awards to A-Z, clearly was the appropriate basis for contractor selection. In our view, any firm submitting a bid under GSA's invitation, properly balanced with respect to whether each bid item legitimately carried its share of the cost of the work, had to take the estimated quantities that represented the government's requirements into consideration. ^{1/} See Tennessee Valley Service Co.-- Reconsideration, B-188771, supra. Allen makes no argument that it was prejudiced by the IFB's failure to detail the evaluation methodology fully except to allege, generally, that if the IFB had so described the methodology, Allen would have changed its pricing structure. We believe, however, that a finding of prejudice based only on the bidder's self-serving allegation that it would have bid differently would undermine the integrity of the competitive bidding process by creating an auction after prices have been exposed. See Tennessee Valley Service Co.--Reconsideration, B-188771, supra. In this regard, we point out that in order to preserve the integrity of the competitive bidding system, pertinent procurement regulations require a "compelling reason" to cancel an

^{1/} A bid that is materially unbalanced, so that there is reasonable doubt as to whether award to that firm will result in the lowest ultimate cost to the government, cannot be accepted. See United Food Services, Inc., B-214098.2, Sept. 18, 1984, 84-2 C.P.D. ¶ 312.

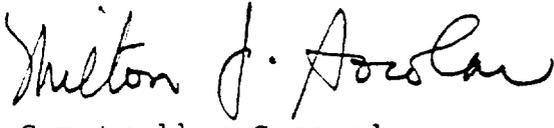
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invitation after bids have been opened and prices exposed. Federal Acquisition Regulation, § 14.404-1, 48 Fed. Reg. 42,102, 42,179 (1983).

We therefore believe that GSA properly awarded the contract to A-Z, without prejudice to Allen, and are recommending by separate letter to GSA that the award be reinstated. See Safemasters Co., Inc., 58 Comp. Gen. 225 (1979), 79-1 C.P.D. ¶ 38. Our letter includes a recommendation that the other terminated contracts also be reinstated.

This decision contains a recommendation for corrective action to be taken. Therefore, we are furnishing copies to the Senate Committees on Governmental Affairs and Appropriations and the House Committees on Government Operations and Appropriations in accordance with section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. § 720 (1982), which requires the submission of written statements by the agency to the committees concerning the action taken with respect to our recommendation.

for 
Comptroller General
of the United States