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DECISION

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

FILE: B-216632 DATE: February 27, 1985

MATTER OF: Medical Gas & Respiratory Services, Inc.

DIGEST:

Agency's decision to terminate award was justified where award was based on an erroneous evaluation of bids and protester was not entitled to award on item terminated.

Medical Gas & Respiratory Services, Inc., protests the partial cancellation of its contract for oxygen concentrators and backup oxygen services awarded to it by the Veterans Administration (VA) under invitation for bids (IFB) No. 621-10-84. VA "canceled" Medical Gas' contract in order to award part of the requirement to Vital Care Industries after VA discovered that it had made an error in evaluating Vital Care's bid price under the IFB. Medical Gas contends that it received a proper award and that, in reliance on that award, it placed an order for equipment needed under the contract. The protester maintains that the award to Vital Care should be set aside and the contract for the entire requirement reawarded to it.

We deny the protest.

The IFB bidding scheme established five geographical zones. Bids were solicited for oxygen concentrators, backup oxygen and emergency backup oxygen on a zone by zone basis. For each item within a zone, the bid schedule provided blanks for a unit price, an estimated quantity and a blank for an extended price. The IFB also provided a blank for a total aggregate price for each zone. Further, the solicitation stated that:

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> "The Veterans Administration reserves the right to make an award to the responsible bidder quoting the lowest aggregate price for all items, for any group of items, or on an item basis, 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 $500."

Medical Gas submitted the low bid for zones 2 through 5 and the second low bid for zone 1. Vital Care submitted the low bid for zone 1. The contracting officer calculated that the VA would save only $327 by splitting the award so that Vital Care would receive a contract for zone 1 services and Medical Gas would receive the contract for zones 2 through 5. The contracting officer concluded that the difference did not offset the $500 differential established in the solicitation for administering multiple contracts and notified Medical Gas by telephone on September 5, 1984, and by letter dated September 5, that it was being awarded all five zones.

Vital Care, however, orally protested to the contracting officer. The $327 differential, Vital Care complained, was for 1 month only and on an annual basis would amount to a difference of $3,924. After examining Vital Care's complaint, the contracting officer decided that the award was improper. On September 6, Medical Gas was notified that it should have only been awarded zones 2, 3, 4 and 5 and that VA was "cancelling" the zone 1 award.

Medical Gas contends that VA acted arbitrarily in "cancelling" the zone 1 award because it had a binding contract for all five zones based on the telephone call from the contracting officer and the September 5 award letter. Medical Gas relies on the standard clause set out in Federal Acquisition Regulation (FAR), 48 C.F.R. § 52.214-10(d) (1984), and included in the IFB, which provides:

"A written award or acceptance of a bid mailed or otherwise furnished to the successful bidder within the [time] for acceptance specified in the bid shall result in a binding contract without further action by either party."

Medical Gas also asserts that in reliance on the award, it placed orders for 120 concentrators, 50 of which were to be used in zone 1.

Initially, we point out that the contract in this instance contained termination for convenience and disputes clauses and that any claim Medical Gas may have arising from the "cancellation" of the zone 1 award is for consideration under the contract disputes procedure and the Contract Disputes Act of 1978, 41 U.S.C. § 601 (1982). However, we review protests against termination of contracts resulting from alleged deficiencies in the initial contract award. Space Age Engineering, Inc., B-209543.2, Apr. 19, 1984, 84-1 CPD ¶ 447.

Where it is discovered shortly after award that an erroneous award has been made, it is normally appropriate for the government to correct its mistake by terminating the improper award and making the award that should have been made in the first place. Such action is proper to preserve the integrity of the competitive procurement system. Central Texas College, B-211167.3, Mar. 2, 1984, 84-1 CPD ¶ 259. VA, in its report on the protest, justifies its actions on this basis.

The contracting officer based the initial award on computations that reflect a belief that the estimated quantities indicated on the bid schedule apply to the entire 12-month contract life. He canceled the zone 1 award to Medical Gas only after concluding that these estimates were intended to apply on a monthly basis and that the intended price for each item had to be multiplied by 12. Consequently, he calculated the difference between a zone 1 award to Medical Gas and Vital Care as $3,924.

The IFB, however, did not indicate that the estimated quantities were stated on a monthly basis. Nevertheless, where all parties treat an IFB as anticipating bids on a basis that meets the government's needs, no bidder is prejudiced if bids are evaluated on that basis because bidders compete equally. Singer Safety Company, B-216674, Oct. 16, 1984, 84-2 CPD ¶ 414. Medical Gas does not contend that bids were submitted on other than a monthly basis. The procurement was advertised and could be properly awarded only on the basis of lowest evaluated price. Reppert Marine Sales and Service, 60 Comp. Gen. 495 (1981), 81-1 CPD ¶ 430. Construing the IFB as asking for monthly prices, the protest has no merit because, as indicated earlier, Medical Gas' aggregate bid is not low, based on a 12-month period.

Medical Gas argues, however, that if multiple awards by zones are appropriate, VA should have awarded contracts on an item-by-item basis within each zone. According to Medical Gas, this would also be allowed by the IFB's aggregate award clause, in which event Medical Gas points out, its bid was low on item 2 in zone 1.

According to VA, such a result was not intended. VA explains that it only intended to reserve the right to make award by geographical zone and that it would not be reasonable to award on an item-by-item basis within each zone, because the items, other than item 1 for each zone, merely fill incidental requirements.

We believe that VA's interpretation of the IFB in this respect is correct and that award was to be made on an aggregate of all the zones or on an individual zone basis only. The provision questioned contains standard form language. Elsewhere, the IFB forbade bids on an item-by-item basis within zones and required the contractor making deliveries of incidental items to inspect and maintain the primary equipment delivered under item No. 1. As VA notes, separate awards of incidental items within a zone would require one contractor to inspect and maintain the equipment furnished by other contractors, a result that was clearly not intended. In the circumstances, we think it is clear that the IFB did not anticipate separate awards of individual items within zones.

The protest is denied. By separate letter, however, we are bringing our concern regarding the adequacy of the IFB statement of estimated quantities to the attention of the Administrator of Veterans Affairs.

Harry R. Van Cleve

for Comptroller General
of the United States