

094-763

DECISION



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

40987

FILE: B-181208

DATE: July 29, 1974

MATTER OF: Repco Industries, Inc.

DIGEST: In a sale of surplus property, Defense Supply Agency properly limited award to protester to only those items on which it submitted highest bid and which its bid bond was adequate to support. George Epcar Co. v. United States, 377 F. 2d 225 (10th Cir. 1967).

At C 306

The foregoing concern, which was the high bidder on items 120, 122, 123, 124, 125, 127, 128, 129, 130 and 131 on Surplus Sale 41-4279, by the Defense Supply Agency, Defense Property Disposal Service (DPDS), Defense Depot Ogden Station, Ogden, Utah, was awarded items 120, 127, 128 and 130 for a total sum of \$14,771.52, but denied the remainder of the items because its annual bid bond, with a penal sum of \$3,000 (20 percent), was insufficient to cover all of the referenced items which totalled \$25,850.16.

The protester has requested that it be awarded the remainder of the lots on which it was the high bidder, claiming that it would serve the best interests of the Government, and relating that it was previously awarded a contract in the amount of \$47,654.97 under a surplus sale contract in March 1973 in which a bid bond in the same amount was accepted.

The solicitation package, with incorporations, made mandatory the submission of a bid deposit in an amount not less than 20 percent of the total bid; permitted the bid deposit to take the form of an annual deposit bond, as herein submitted by Repco; and provided authority for the rejection of any bid not timely supported by an "acceptable" bid deposit.

It has been the longstanding position of this Office that bid bond requirements in a solicitation must be considered a material part of the invitation and normally a bid bond in less than the indicated amount requires rejection of the bid as non-responsive. 39 Comp. Gen. 827 (1960). However, with regard to surplus sales invitations in which awards may frequently be made on an item-by-item basis to that bidder which is high on a particular item, as in the instant case, our Office has sanctioned

Contract awarded
Solicitation specifications
Awarded
Bid bond

[Protest - Requesting
Total Award]

708453

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partial awards of those items on which a bidder was high and which his bid bond was adequate to support. See B-168460, February 2, 1970; B-158461, April 6, 1966; George Epcar Co. v. United States, 377 F. 2d 225 (10th Cir. 1967).

In view thereof, we concur with the contracting officer's recommendation that the award be restricted to the maximum dollar value of items on which Repco was high and which the \$3,000 penal sum of its annual bond, which we consider analogous to a bid deposit, was sufficient to support under the provisions of the "20 percent" requirement.

Concerning the allegation that the annual bond was considered sufficient to support a previous award in the amount of \$47,654.97, we do not possess the requisite facts and documentation to comment on the legality of the actions taken in that instance. However, the fact that the Government may have waived a material requirement of a bid in a previous unrelated matter may not be construed as conferring upon a contractor a legal right to such a waiver in a subsequent case.

Accordingly, the protest is denied.

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Deputy Comptroller General
of the United States