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DECISION

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

FILE: B-190837 DATE: April 24, 1978

MATTER OF: Ronald Campbell Company

DIGEST:

1. Provision in solicitation that $100 per contract administrative costs evaluation factor will be utilized in determining whether to make multiple awards is legitimate method of evaluation under procurement regulations and, therefore, is not basis for legal objection.

2. That bidder has no control over prices charged by its supplier is irrelevant to fixed-price Government procurements.

3. Alleged "wildly" fluctuating exchange rates did not affect level of competition as protester maintained and risk could have been estimated and provided for in arriving at fixed prices.

Invitation for bids No. N00600-78-B-0571 was issued by the Naval Regional Procurement Office, Washington Navy Yard, for the procurement of 647 different scientific and medical journal subscriptions (104 of which were foreign publications). The pertinent portions of the invitation that were controlling on the manner of making the contract award(s) were the following:

"AWARD BY LOT

"Subject to the provisions of paragraph 10 of the Solicitation Instructions and Conditions, award will generally be made to a single bidder on each entire lot. However, the Government reserves the right to award by item when the Contracting Officer determines that it is advantageous to the Government.

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"10. AWARD OF CONTRACT. (a) The contract will be awarded to that responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered.

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"(c) The Government may accept any item or group of items of any offer, unless the offeror qualifies his offer by specific limitations. UNLESS OTHERWISE PROVIDED IN THE SCHEDULE, OFFERS MAY BE SUBMITTED FOR ANY QUANTITIES LESS THAN THOSE SPECIFIED; AND THE GOVERNMENT RESERVES THE RIGHT TO MAKE AN AWARD ON ANY ITEM FOR A QUANTITY LESS THAN THE QUANTITY OFFERED AT THE UNIT PRICES OFFERED UNLESS THE OFFEROR SPECIFIES OTHERWISE IN HIS OFFER. * * *

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"EVALUATION OF BIDS FOR MULTIPLE AWARDS (1975 OCT)

"In addition to other factors, bids will be evaluated on the basis of advantages or disadvantages to the Government that might result from making more than one award (multiple awards). For the purpose of making this evaluation, it will be assumed that the sum of $100 would be the administrative cost to the Government for issuing and administering each contract awarded under this invitation, and individual awards will be for the items and combinations of items which result in the lowest aggregate price to the Government, including such administrative costs."

Four bidders submitted bids on this procurement. A fifth firm submitted a letter advising that it could not bid in the manner envisioned in the invitation but would be willing to provide the subscriptions on the basis of the published price (over which it stated it had no control) on its invoice plus a service charge not to exceed 4-1/2 percent of the invoice. The Ronald Campbell Company (Campbell), which did not submit a bid, protested prior to bid opening the manner in which bids were solicited.

The Campbell protest is basically twofold. First, Campbell protests the fact that the procurement activity allegedly makes the possibility of multiple awards very unlikely due to the $100 administrative costs evaluation factor. It is felt that this unlikelihood makes bidding on less than the entire lot of 647 subscriptions "highly speculative, since the possible profit from an award may not outweigh the cost of the time preparing low bids on at least some items." Because some bidders will not bid in view of this factor, competition on the procurement allegedly will be diminished. Second, it is contended that some potential bidders will not submit bids, thereby lessening competition, because bid prices are required to be submitted in fixed-dollar amounts although bidders have no control over changes in subscription prices by the publishers and over the prices that foreign subscriptions will cost due to the "wildly" fluctuating value of the American dollar on the currency markets. Accordingly, it is requested that the present invitation be canceled and a new one be issued in which a fixed-dollar service charge above what the bidder pays for the subscription or a fixed-percentage service charge of the publisher's list price would serve as the basis for award evaluation.

As regards the first basis of the protest, ASPR § 2-407.5 (1976 ed.) specifies several factors, in addition to price, which may be considered in evaluating bids. "Advantages or disadvantages to the Government that might result from making multiple awards" is one of the factors. ASPR § 2-407.5(iii) (1976 ed.). Under this authority, it is sometimes provided in invitations, as it was in this case, that the added cost of administration of additional contracts, in a stated dollar amount, will be considered in determining whether to make separate contracts for different items. ASPR § 2-201(a) Sec. D(iii) (1976 ed.). As indicated in 47 Comp. Gen. 233, 235 (1967), considerations of centralized management and administration justify an aggregate award at a higher price when the higher cost is clearly offset by administrative savings and the invitation provides for award on that basis and establishes the cost savings to be used in bid evaluation. Although Campbell may disapprove of the method of evaluation, we note that the last publication procurement by the same contracting activity resulted in the award of three contracts and, in any event, it is, as indicated above, a legitimate procedure under the procurement regulations. Therefore, it is not a basis for legal objection by our Office.

With respect to the second basis of the protest, we note first that any supplier of services or goods from which a Government contractor must in turn procure in order to complete his Government contract may always raise prices during the duration of the Government contract unless bound otherwise by contract. However, as observed by the contracting activity, that is a risk attending all bidders which they can estimate and provide for in arriving at their fixed prices. We have upheld the propriety of requiring bidders to estimate the cost of contract compliance and to bear the risks accompanying such compliance. The Ellis Company, B-189390, B-189937, January 27, 1978, 78-1 CPD 70. Consequently, that a bidder has no control over a publisher's list price can have no bearing on this case.

As regards the argument that the "wildly" fluctuating currency rates create an unfair atmosphere for potential bidders and will lessen competition, the last two yearly procurements for this type of service by the same contracting activity resulted in the obtaining of four and five bids, respectively. Thus the problem of which Campbell complains does not seem to have affected the competition that is usually received on this type of procurement. Moreover, the preceding statement with respect to risk is equally applicable to this situation.

References to ASPR §§ 3-401(a)(i) and 3-404.2(b) (1976 ed.) as to contract types are not applicable here, since this is an advertised procurement and those provisions apply to procurement by negotiation. ASPR § 2-104 (1976 ed.) states that "Contracts awarded after formal advertising shall be of the firm fixed price type." Although that ASPR section also provides for fixed-price contracts with economic adjustment, the utilization of that type of contract is not required and is dependent upon a determination by the contracting officer that it is necessary. The contracting officer has not made such a determination in this case.

Accordingly, the protest is denied.

R.F. Keller

Deputy Comptroller General
of the United States