

Proc II

DECISION



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

10,007

FILE: B-193628

DATE: May 2, 1979

MATTER OF: Roy's Rabbitry

DLC 01470

[Protest of Aggregate Award Provision]

DIGEST:

Award in aggregate is not justified when there is no showing in current record that bidders for less than estimated quantity cannot meet Government's needs or that savings will result. GAO will not sanction restrictive procedures merely because of administrative burden of obtaining maximum competition.

Martin L. Roy (Roy), doing business as Roy's Rabbitry, protests the proposed aggregate award by the National Institutes of Health (NIH), Department of Health, Education, and Welfare, of a contract for nearly 10,000 rabbits for research purposes.

We find there is nothing in the current record which justifies use of the aggregate award provision. Unless NIH can provide us with such a justification, we recommend that the agency resolicit. On the basis of bids received, it then can determine whether a single award or multiple awards actually will be most advantageous to the Government.

The protested invitation for bids, No. 263-79-B(67)-0001, was issued October 15, 1978. Under 16 items, NIH sought bids for an estimated total of 9,450 New Zealand White, non-inbred rabbits of specified sex, age, type, and weight. Different quantities, as ordered by the project officer, were to be delivered weekly to NIH and Saint Elizabeths Hospital Laboratories in the Washington, D.C. area and to a North Carolina research facility. According to the solicitation, the number of rabbits listed in the bid schedule did not represent NIH's total requirement, but quantities in excess of those which the NIH activities themselves might furnish. The solicitation specifically stated that award would be made in the aggregate to the lowest responsive, responsible bidder.

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Roy did not bid, but protested before the December 6, 1978, opening date, arguing that an award in the aggregate would eliminate a large number of capable, licensed suppliers who otherwise could compete for part of NIH's requirement. Roy alleges that award on this basis is solely for the convenience of NIH and/or because of preference for its current supplier. Roy also argues that an aggregate award will increase costs to the Government, as shown by the fact that prices of the only two bidders who responded to this solicitation were 39 and 46 percent higher than their prices the previous year. Roy concludes that the solicitation is unduly restrictive and that it violates procurement regulations by failing to provide competition to the maximum practical extent.

NIH's response to the protest emphasizes the need for healthy animals, meeting strict specifications for breeding and disease monitoring and control. Explaining that the rabbits may be moved from one laboratory to another, either for use in related projects or for re-use when experiments performed by one laboratory will not affect results obtained by a second, the contracting officer states:

" * * * In view of the logistics involved, it is clear that the introduction of poorly defined, disease-carrying, or frankly ill animals into the Institutes would have widespread adverse effects, not only on the quality of research but on its continuity. The time required to diagnose and treat or eliminate disease outbreaks could idle a considerable number of investigators, technicians, and equipment, and call the validity of research results into question.

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"If a disease problem occurs in rabbits after they reach an investigator, it is difficult to trace the source of

contamination when more than one supplier is used. The multitude of investigators using rabbits at NIH makes it highly likely that one investigator might be using rabbits from two or more sources. This situation could very well lead to experimental results becoming void because of transmission of diseases between rabbits from contaminated and specific pathogen-free sources."

NIH also argues that multiple awards would result in procurement of rabbits which had been subject to different environmental stimulants and stresses, which in turn would cause genetic variables. In addition, the agency states, multiple awards would increase transportation and delivery problems; would require management efforts, including site visits, monitoring, and ordering, beyond the capability of its staff; and would force investigators to gear their work to suppliers' capability.

We have held that an agency's determination that the Government's advantage lies in single, not multiple, awards is a proper exercise of administrative discretion, which we will not question if that determination is reasonably based. Jones & Guerrero Co., Incorporated, B-192328, October 23, 1978, 78-2 CPD 296; B-158382, March 11, 1966. In this case, NIH has effectively limited competition to suppliers who are large enough to meet its annual requirement. (The procurement is a total small business set-aside, but it is clear from Roy's protest that "small" is relative.) The issue is whether there is a reasonable basis for this restriction.

NIH's specifications are extremely stringent: each bidder must be engaged in the breeding, raising, and shipping of rabbits; must use an approved breeding system which minimizes inbreeding; must have a disease monitoring and control program, directed by a qualified veterinarian; must test for specific organisms, antibodies, and disease conditions; and must submit specimens to or have rabbits examined

by an approved laboratory at specific intervals. In addition, feeding, watering, housing, and transportation of rabbits must be carried out under controlled conditions. For example, all vehicles must be heated and air conditioned by a system independent of the engine, and each driver must be qualified to handle and care for the animals being transported. Prospective contractors also must be licensed by the Department of Agriculture under the Animal Welfare Act of 1970, 7 U.S.C. § 2133 (1976).

These specifications, we find, provide an objective standard--other than size--for a determination of responsibility. There has been no showing that Roy, or any other supplier of less than 10,000 rabbits, cannot meet them. The need for properly bred, healthy animals therefore does not justify preventing bidders from offering less than that quantity.

NIH's conclusions about genetic variables are unsupported. It appears that genetic variables may occur even if award is restricted to a single supplier, since NIH indicates that rabbits are bred in-house for research purposes. Environmental differences, contributing to genetic variables, therefore seem inevitable. As Roy points out, genetic variables also will occur at the end of a contract year unless the same supplier is used indefinitely. In addition, it appears that a supplier could maintain more than one colony of rabbits for purposes of furnishing them to NIH. The solicitation merely requires the animals to be "from an established closed colony of rabbits maintained by the contractor;" it does not require them to be from a single such colony. This too could cause environmental differences leading to genetic variables. Even if prevention of environmental differences is reasonable and necessary for NIH's purposes, we cannot conclude that this will be accomplished by an aggregate award.

For the same reasons, contamination (if it occurs despite NIH's stringent specifications) may be difficult to trace even if an aggregate award is

made. Diseases could occur either among rabbits bred in-house or among those from an outside supplier.

There is nothing in the record to indicate whether a single award or multiple awards will result in the lowest overall price to the Government. No supplier of less than the estimated quantity of rabbits has bid, so there is no basis for assuming that a smaller supplier's price will not be competitive. See 52 Comp. Gen. 47, 51 (1972). Considerations of centralized management by one contractor--even one with a superior performance record--and of administration of only one contract are not sufficient to justify an aggregate award if a savings can be realized by making multiple awards. See 47 Comp. Gen. 233 (1967).

Finally, NIH's apparent concern that it would not be economically feasible for small suppliers to attempt to meet its requirements is a determination which must be left to the individual judgment of those suppliers. A determination by Government officials as to the quantity which can be most economically handled by bidders does not provide a basis for prohibiting offers for less than the quantity required. B-170791, March 17, 1971.

In view of the foregoing, we do not find that NIH was justified in using the aggregate award provision. Our Office will not sanction restrictive procedures merely because obtaining maximum competition is administratively burdensome. Rotair Industries, et al., B-190392, December 13, 1978, 58 Comp. Gen. ___ (1978), 78-2 CPD 410 at 8.

Unless there is some further justification for the NIH approach, we recommend that the agency resolicit. Any new solicitation should state that in evaluating bids for award, NIH will consider the advantages or disadvantages to the Government which might result from making more than one award. See FPR § 1-2.407-5(c) (1964 ed.). It also should include an evaluation factor for the cost of site visits, health monitoring, and other administrative tasks.

In determining, on the basis of bids received, whether a single award or multiple awards will be most advantageous to the Government, NIH may group items or combinations of items to obtain the lowest total price. See 52 Comp. Gen. 932 (1973). If a bidder wishes to supply only part of the quantity listed as a single item, and award to that bidder would be to the Government's advantage, we see no reason why it could not be contractually provided that NIH will purchase as much of its requirement as that bidder is committed to supply at the offered price, and will obtain the remainder of its requirement from the next-lowest bidder or bidders. (As noted above, NIH already has provided that the award will not be for its total requirement, but only for those quantities in excess of rabbits bred in-house.)

By letter of today, we are recommending resolicitation, evaluation and award on the basis outlined above to the Secretary of Health, Education, and Welfare.

The protest is sustained.



Deputy Comptroller General
of the United States