



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

B-177967

June 5, 1973

31001

Tru Grate
357 South W. Priva
Denver, Colorado 80223

Attention: Mr. James Heera
President

Gentlemen:

Reference is made to your letter of February 1, 1973, protesting an award to any other bidder under IRS No. 73-35 issued by the Fiscal Management Branch, Internal Revenue Service, San Francisco, California.

The above-referenced solicitation was for the painting and refinishing of 16 different types of furniture. Five bids were received and opened on January 2, 1973, with your firm submitting the lowest bid in the amount of \$17,970.80 for all 16 items. As only \$10,000 was allocated for this procurement, it was determined by the contracting officer to delete Item 13, which consisted of 1600 chairs, to reduce the contract price to the amount of funds available.

Your protest is based on the fact that after the deletion of Item 13, you were no longer the low bidder, but Grate Industries (Grate), the second low bidder, became low. Award was made to Grate on January 24, 1973. A tabulation of the bids shows the following changes after the deletion:

<u>Bidder</u>	<u>Total for Items 1-16</u>	<u>Total for Items 1-12 and 14-16</u>
Tru-Grate	\$17,970.80	\$7,650.80
Grate Industries	19,809.20	7,329.20
Protek Upholster Mfg. Co.	26,650.00	7,488.00
Wilson and Hopton Painting	25,024.50	10,624.50
Elliot Painting	35,376.00	11,396.00

You were furnished a copy of IRS's response to your protest for your comments, but since you have not to date submitted comments on the IRS response, we will decide the matter based on the record before us.

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It is your contention that since the largest item in the invitation was withdrawn, the proper procedure would have been to cancel the invitation and resolicit for the other items.

Paragraph 10(c) of Standard Form 33A, which was incorporated by reference into the solicitation, reads, in part, as follows:

The Government may accept any item or group of items of any offer, where the offeror qualifies his offer by specific limitations. * * *

As you did not so limit your offer, the contracting officer was free to accept any portion of it. In view of this reservation of right in the ISA, no objection may be raised by our Office to the deletion of Item 13.

As regards cancellation of the invitation, the discarding of all bids and resoliciting, section 1-2.404-1(u) of the Federal Procurement Regulations states that:

Preservation of the integrity of the competitive bid system dictates that, after bids have opened, award must be made to that responsible bidder who submitted the lowest responsive bid, unless there is a compelling reason to reject all bids and cancel the invitation. * * *

Since bids were to be submitted on an item by item basis rather than on an aggregate total price basis, it is presumed that each bidder would have submitted his best price for each item so that a discarding of all bids could well have led to an auction to the detriment of the formal competitive bidding system. Therefore, the award for items for which funds were available was proper. 39 Comp. Gen. 326 (1959); 47 Comp. Gen. 103 (1957).

Therefore, your protest is denied.

Sincerely yours,

Paul G. Deabling

For the Comptroller General
of the United States