

DECISION



11930 4 L-11
J. Weiskopf
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-194419

DATE: November 5, 1979

MATTER OF: Mark A. Carroll and Sons, Inc. -CNG01740

[Protest of VA Contract Award]
DIGEST:

1. Protest is sustained where agency made aggregate award to one bidder at price exceeding sum of individual low bids on separate items required by IFB and IFB did not mandate single award.
2. Protester/claimant is entitled to bid preparation costs where agency, instead of accepting bids of protester and others on individual item basis, makes aggregate award to another bidder at higher price than sum of individual item low bids in violation of 41 U.S.C. § 253(b) which requires award on basis of lowest cost to Government, but is not entitled to amount for loss of anticipated profits. Protester should submit to agency documentation substantiating claim for bid preparation expenses so that amount of entitlement may be determined.

Mark A. Carroll & Son, Inc. (Carroll) protests the award of the outpatient canopy portion of a contract for the construction of four ramps and entrance canopies at the Veterans Administration (VA) Medical Center in Manchester, New Hampshire. We sustain the protest because the VA failed to make an award on the basis of lowest cost to the Government, thereby violating applicable procurement statutes. We also find that Carroll is entitled to bid preparation costs. *ReCo0899*

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The invitation for bids, IFB No. 608-11-81, provided blanks for the entry of prices adjacent to each of Items 1 through 4, representing the canopies. These were followed by a blank for "Composite bids for all items accepted." The solicitation specifically provided that a separate bid was required for each item and that "award of contract will be made on each item separately."

In response to the IFB, the VA received the following four bids:

	<u>Item 1</u>	<u>Item 2</u>	<u>Item 3</u>	<u>Item 4</u>
Carroll	\$62,935	\$47,749	\$18,334	\$4,989
DLG 03254 { Damon Const. Co.	55,455	No bid	No bid	No bid
CN 60174 { Charles Const. Co., Inc.	64,826	52,270	14,965	4,951
DLG 03255 { Henry E. Bourbeau, Inc.	57,886	51,571	11,143	3,326

(There appears to have been confusion among the bidders as to whether they were to price "Composite bids for all items accepted" -- two entered the sum of their unit prices and two did not complete the blank.)

The three bidders who bid upon the entire project-- Bourbeau, Carroll and Charles--had aggregate bids of \$123,926, \$134,007 and \$137,012, respectively. The record does not indicate, however, that any bid was submitted on an "all or none" basis. The VA made an aggregate award of all four items to Bourbeau at \$123,926. Although this was the lowest aggregate bid, it exceeded the sum of the individual low bids for each item by \$6,253. Had the VA awarded contracts based upon the low bid for each item, Carroll would have been in line for award of Item 2.

The VA states that it made award to Bourbeau because it deemed a single award to the low aggregate bidder to be in the Government's "best interests." The VA does not further explain its position. It may be that the VA believed the costs involved in administering multiple contracts of relatively low value would offset the \$6,253 differential. When such costs are to be considered in bid evaluation, however, the IFB must so indicate. See 47 Comp. Gen. 233 (1967). Moreover, we note that the costs of administering multiple contracts are usually in the \$100 range. See B-172107(1), July 19, 1971; Defense Acquisition Regulation (DAR) §§2-201(a) Section M (iii) and 7-2003.23(b) (1976 ed.) (limiting the evaluation factor for contract administration costs to \$100 for each additional contract awarded).

41 U.S.C. § 253(b) (1976) requires that award shall be made to the responsible bidder whose bid, conforming to the IFB, will be most advantageous to the Government, price and other factors considered. Our Office has consistently held that this language requires award on the basis of the most favorable cost to the Government, assuming responsiveness of the bid and the responsibility of the bidder. Request of Director, Supply Service, Veterans Administration for advance decision, B-180477, February 11, 1974, 74-1 CPD 63. While an aggregate all or none award is proper where it represents the lowest overall cost to the Government even where a solicitation specifies that award shall be on an item by item basis, an agency is not free to make such an award when separate awards would be less costly. Request of Director, Supply Service, VA, supra. Thus, on this record, we find no legal justification for the aggregate award, which clearly did not represent the lowest overall cost to the Government. Therefore, we sustain Carroll's protest.

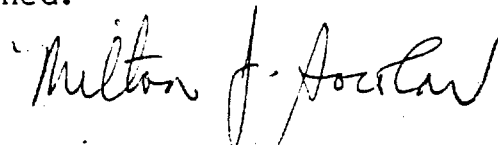
The VA reports that the work is substantially completed. Consequently, we cannot recommend award to Carroll. Under the circumstances, however, we think Carroll is entitled to bid preparation expenses. In this regard, Carroll claims damages of \$10,500. Although

Carroll has not substantiated the amount of its claim, we assume that the \$10,500 represents loss of profits and bid preparation costs.

There is no legal basis for allowing an unsuccessful bidder to recover anticipated profits even if the claimant is wrongfully denied a contract. Eagle Construction Co., B-191498, March 5, 1979, 79-1 CPD 144. However, we believe Carroll is entitled to bid preparation costs because the contracting officer acted unreasonably and in violation of 41 U.S.C. § 253(b) by making a single award, see William F. Wilke, Inc., 56 Comp. Gen. 419 (1977), 77-1 CPD 197, and deprived Carroll of an award to which it was entitled. See International Finance and Economics, B-186939, October 25, 1977, 77-2 CPD 320. Carroll should submit substantiating documentation to the VA to permit the agency to determine the amount to which Carroll is entitled because of the agency's failure to award Item 2 to it. If the VA and Carroll cannot agree on quantum, the matter should be returned to this Office for resolution.

In conjunction with its claim for damages, Carroll alleged that the VA never notified Carroll its bid had been rejected, and that for a six-month period the VA told Carroll that it would be awarded the outpatient canopy portion of the contract. The VA denies having made such statements, and points out that it had awarded a contract to Bourbeau approximately one-month after bid opening. The resolution of this controversy has no effect on our decision; however, we are directing the VA's attention to Federal Procurement Regulations (FPR) § 1-2.408 (1964 ed.), which requires that the contracting activity notify the unsuccessful low bidders promptly of the fact that their bids were rejected, and recommends that notification should be given to all other unsuccessful bidders where feasible.

The protest is sustained.



For The Comptroller General
of the United States