

144/46

DECISION



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

FILE: B-198199

DATE: July 30, 1980

MATTER OF: Carolina Parachute Company

DLG05013

DIGEST:

Contention that bids should have been evaluated on lot basis only is without merit. IFB provisions clearly allowed evaluation of bids and making of award on item or lot basis.

[Carolina Parachute Company (Carolina) protests the award of a contract to the other bidder, Mills Manufacturing Corporation (Mills), under invitation for bids (IFB) No. N00104-80-B-0189, issued by the Navy Ships Parts Control Center (NSPCC).] DLG01331

Carolina contends that the IFB called for award on a lot basis. If the bids are evaluated on a lot basis (a lot consisting of the IFB's only two line items) Carolina's bid is low, however, if bids are evaluated on an item basis, split awards result in the low cost to the Government. Alternatively, Carolina argues the IFB is fatally defective because of irreconcilably conflicting provisions as to the basis of award which render the IFB ambiguous and uncertain, necessitating readvertisement. [NSPCC views the IFB as reserving the Government's right to make multiple awards for the two individual items if that method is determined to be most advantageous to the Government.]

The IFB contained Standard Form 33A, Solicitation Instructions and Conditions (SF33A), paragraph 10(c) of which follows:

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[Protest Against Contract Award]

"(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."

The IFB also contained clause D-23 which reads:

"Subject to the provisions of paragraph 10(c) of Solicitation Instructions and Conditions (Standard Form 33A), award will generally be made to a single offeror on each entire lot. However, the Government reserves the right to award by item when the Contracting Officer determines this to be advantageous to the Government. For purposes of this solicitation, a lot consists of items 0001 & 0002 and their aggregate quantities to all destinations."

[Both Mills and the NSPCC question the timeliness of Carolina's protest because the protest is based upon alleged improprieties appearing in the IFB. Therefore, they contend that under section 20.2(b)(1) of our Bid Protest Procedures (4 C.F.R. § 20.2(b)(1) (1980)), the protest should have been filed prior to bid opening.]

[In response, Carolina argues that it reasonably interpreted the solicitation as providing for award on a lot basis, and that it had no reason to believe prior to bid opening that the solicitation would be interpreted otherwise.]

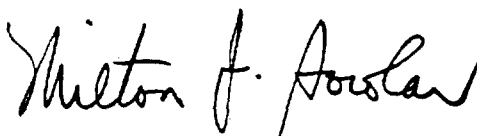
We do not agree with the agency and Mills that Carolina's protest should be viewed as based upon

an apparent impropriety in the IFB. Rather the protester is contending that the solicitation precluded award on an item basis. Therefore, the protest is timely. However, we find that the protest is without legal merit.

The first sentence of paragraph 10(c) clearly reserves the Government's right to award by item unless a bid is qualified. Moreover, the first sentence of clause D-23, which is subject to the provisions of paragraph 10(c), only states that "Award will generally be made to a single offeror on each entire lot," (Emphasis added) and not that it would definitely be made on such a basis. The next sentence of the clause explicitly reiterates the Government's reservation of the right to award by item when the contracting officer determines that to be advantageous to the Government. We further note that the IFB incorporated the standard clause for the Government to evaluate the advantages and disadvantages of multiple awards. [Thus, while the IFB shows a preference for awarding on a lot basis, it clearly reserved the right to award on an item basis should it prove advantageous.]

The protest is denied.

However, we do note that clause D-23 apparently should not have been included in the solicitation because its inclusion is mere surplusage in permitting award by lot or by item. This is so because the only lot consisted of the two items being procured, and the IFB elsewhere permitted award in the aggregate or by item.



For the Comptroller General
of the United States