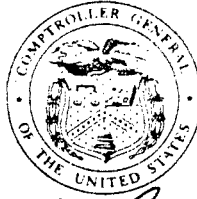


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DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548*[Protest Against Proposed Multiple Awards]*

FILE: B-199644

DATE: November 26, 1980

MATTER OF: Granite State Machine Co., Inc.

DIGEST:

Where IFB contains paragraph 10(c) of standard form 33A, which permits Government acceptance of any item or group of items, multiple awards are permissible notwithstanding fact that IFB contains words, in singular, such as "award" and "contractor," because regulation requires clear language, not mere implication, to override language of paragraph 10(c). Also, contrary to protester's allegations, lack of multiple-award evaluation provision or presence of "Variation in Quantities," unbalanced bid, or option evaluation clauses does not mandate aggregate award. B-165531, January 8, 1969, will no longer be followed to extent it indicates contrary interpretation.

Granite State Machine Co., Inc. (Granite), has protested the proposed multiple awards by the Naval Sea Systems Command under invitation for bids (IFB) No. N00024-80-B-4188.

The IFB was for a quantity of antislack devices for use on cable winch drums and contained 15 line items. Items 0001 through 0010 were for fabrication and test of the devices, furnishing of data and a provisioned item order. Items 0011 through 0015 were for option quantities of the devices. Both the basic items and option quantities were to be evaluated for award purposes.

The low bid for the total quantity of all items was submitted by Granite in the amount of \$2,443,671. However, A.C. Ball Company (Ball) was the low bidder for items 0005-0010 and items 0013-0015 with a bid price of \$1,174,600. When Ball's low bid on the above items is combined with Granite's prices for

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items 0001-0004, 0011 and 0012 of \$1,077,460, the resultant evaluated total price of \$2,252,060 is \$191,611 lower than a total award to Granite.

Granite protests the making of multiple awards under the IFB and contends that the IFB required a single award to one firm for all items. Granite argues that the language employed in the IFB clearly shows a single award was contemplated. Further, Granite states that in the past, procurements of antislack devices have always resulted in a single award.

Granite points to Defense Acquisition Regulation (DAR) § 2-201(a) (1976 ed.), which lists the standard clauses to be included in a solicitation, wherein under section "M" (Evaluation Factors for Award), it states:

"(iii) when the contracting officer determines that it is necessary to consider the advantages or disadvantages to the Government that might result from making more than one award (multiple awards) (see 2-407.5(iii)), the provision in 7-2003.23(b) * * *."

The provision in DAR § 7-2003.23(b) reads:

"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 the 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."

Granite argues that since the above clause was not in the IFB, multiple awards are improper. We disagree. DAR § 2-407.5 states the contracting officer may consider the other factors listed. Here, the Navy added nothing for the administrative cost of multiple awards. Therefore, there was no reason for the clause to be included in the IFB. This type of clause is included so that bidders will be advised of the exact basis for evaluation and award. While it would be improper for the contracting officer to add an evaluation factor for multiple awards without having advised the bidders, the lack of the above-cited clause does not preclude the making of multiple awards.

Contrary to the assertion of Granite, the inclusion of a clause warning against the unbalancing of bids does not preclude multiple awards. That clause states that any bid which was materially unbalanced as to prices for basic and option quantities may be rejected as non-responsive, not unbalancing between line items of basic quantities as alleged by Granite.

Granite states that further evidence of the Navy's intent to make an aggregate award was section M(3)(A) of the IFB which noted that bids would be evaluated for award by adding the total price for all option quantities to the total price for the basic quantity. Granite contends that the emphasis on total price can only mean the lowest total bid will receive the contract. This option evaluation clause is a standard clause contained in DAR § 7-2003.11(b) and does not control the ability of an agency to make aggregate or multiple awards, but merely advises bidders that both the basic quantity and option quantities would be considered in arriving at the lowest price for each item.

The IFB also contained, through incorporation by reference, DAR § 7-103.4(a) which prohibits any variation in quantity of an item called for by the contract. While Granite cites B-165513, January 8, 1969, as authority for the contention that the presence of this clause indicates an intent to award only one contract, we believe the better interpretation is expressed in Engineering Research, Inc., B-188731, June 15, 1977, 77-1 CPD 431. The 1977

decision found that the requirement that bids be submitted on the basis of furnishing all quantities called for in the schedule meant that a bidder had to bid for all quantities of a line item, not all line items. To the extent B-165531, supra, can be interpreted otherwise, it will no longer be followed by our Office.

As another indication of the intent to make an aggregate award, Granite states that the line item for data on the devices was not to be separately priced for each item, but priced as a whole. We believe Granite has misread this provision. The description of line item 0008 reads:

"Data for Items 0001 thru 0007, and (if option is exercised) Items 0011 thru 0015 (See DD Form 1423, Exhibit 'A,' hereto) NSP \$ _____ to be included in price of Items 0001 thru 0007, and (if option is exercised) Items 0011 thru 0015."

The NSP means "Not separately priced," but does not mean the data was to be priced as one lot. Each line item of equipment was to carry its own share of the cost for data, which would facilitate multiple awards rather than prohibit such awards as Granite alleges.

Granite further contends that the use throughout the IFB of such words as "award," "the contract," and "contractor," all in the singular, indicates that an aggregate award was intended by the Navy. We find what controls in this procurement is the presence of paragraph 10(c) of Standard Form 33A, "Award of Contract," which reads as follows:

"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."

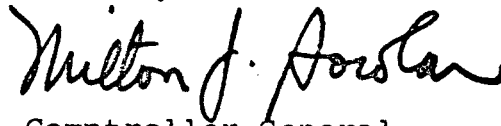
The use of certain terms in the singular, through implication, cannot alter the specified right of the Government to make multiple awards. The instances where Granite cites such language are in standard clauses which are placed in solicitations regardless of the award method or represent obligations of a contractor during performance whether one or more contract is awarded.

If award is to be made in the aggregate, DAR § 2-201(a), section C(v), requires that a statement to that effect be included in the IFB. The obvious intent of the regulations and standard form 33A is that clear language, not merely notice by implication, is necessary for a mandatory aggregate award. Engineering Research, Inc., supra. Granite has pointed to no IFB language which qualifies the Government's right to make multiple awards.

Finally, Granite argues that business sense and past procurement actions require an aggregate award. Granite states that there are many common parts among the line items and an aggregate award would permit a bidder to amortize its costs over a greater quantity, thereby reducing the cost to the Government. We do not believe it is proper for the Government or our Office to speculate as to how bidders price certain items in an IFB where competition is present to generate lowest cost to the Government. Here, multiple awards, not an aggregate award, result in a savings of over \$190,000 to the Government.

While Granite argues that past procurements have always been awarded to a single contractor, we note that even if these awards were improperly made, that does not justify a repetition of the same error. Acme Paper & Supply Co., Inc., et al., B-187439, January 18, 1977, 77-1 CPD 38.

The protest is denied.

A handwritten signature in cursive script, reading "Milton J. Aorlan".

For the Comptroller General
 of the United States