



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

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B-179151

October 5, 1973

The Honorable Donald E. Johnson
Administrator, Veterans Administration

Dear Mr. Johnson:

Reference is made to letter 1340 of July 27, 1973, from the Director, Supply Service, Department of Medicine and Surgery, furnishing a report on the Richmond Communications, Inc. (Richmond), protest against the cancellation of purchase order No. 7950 awarded to that firm under invitation for bids No. 539-60-73 by the hospital at Cincinnati, Ohio. The protest raises the question whether a discount offered by the low bidder should have been considered under the invitation in the evaluation of bids.

Richmond--a self-certified small business concern--was originally determined to be low bidder with a bid price of \$17,835. Although Multitone Electronics, Inc. (Multitone), had submitted a bid of \$16,530, that bid was increased by the 12-percent bid evaluation factor to \$18,513.60 inasmuch as the items offered were of foreign origin. See Federal Procurement Regulations 1.6-104.4(b). Had Richmond not certified itself as a small business, Multitone's bid would have been evaluated by the addition of the 6-percent factor and that firm would have been low bidder at \$17,521.80.

Multitone protested the small business status of Richmond on June 1, 1973, the bid opening date. By letter of June 28, the Small Business Administration (SBA) determined Richmond to be a small business concern for purposes of the procurement. Award of the purchase order was made on that date to Richmond as the lowest evaluated bidder. Multitone appealed the size status of Richmond to the SBA Size Appeals Board, which sustained the small business size status of Richmond on September 7, 1973.

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On July 3, Richmond was telephonically advised by the contracting officer that its award would be cancelled. This was prompted by the fact that evaluation of bids had failed to take into account the 4-percent/30-day prompt payment discount offered by Multitone. When the discount is considered, the Multitone bid becomes lower than the Richmond bid.

Although the invitation included Standard Form 33A, paragraph 9 of which provides for discount evaluation if a discount is offered for more than 20 calendar days, paragraph 2 of the invitation General Conditions deleted paragraph 9 of Standard Form 33A in its entirety. Because of this deletion, Richmond contends that prompt payment discounts were not intended to be part of bid evaluation. It is the position of the contracting activity that because block 16 on the face sheet of Standard Form 33 contained blanks for insertion of prompt payment discounts, it should have been apparent that a prompt payment discount would be considered in bid evaluation. The contracting officer states that the intent was to obtain consideration of 10-day discounts by deleting subparagraph (a) of paragraph 9 of Standard Form 33A which prohibits such discount for evaluation purposes.

It should be noted in this regard that block 16 of Standard Form 33 directs the bidder to paragraph 9 of Standard Form 33A which, as noted earlier, had been deleted in its entirety.

As a general rule, the Government's failure to make specific provisions for every possible method of price quotation should not deprive it of the right to take advantage of a clearly offered benefit which does not contravene any stated requirement in the solicitation or prohibition of the advertising statutes. 48 Comp. Gen. 256 (1968). However, in this connection, we have held that bidders should be apprised as to the basis on which their bids will be evaluated when there are special factors which the Government intends to consider in making bid evaluations. 39 Comp. Gen. 262 (1959).

It is our conclusion that the terms of the invitation did not adequately explain the role that prompt payment discounts, if any, would play in bid evaluation. At best, the IFB was ambiguous and bidders were not competing on an equal basis. However, we must find that at the time of award to Richmond both the bidder and the contracting activity entered in good faith into a contractual arrangement which was felt by both parties to be binding

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on them in all its terms and obligations. In view of this, we believe the proper action to be taken would be to convert the cancellation into a termination of that contract for the convenience of the Government.

Therefore, the procurement should be resolicited with all prospective bidders being clearly advised as to what role prompt payment discounts will play in bid evaluation.

Sincerely yours,

Paul G. Dembling

For the Comptroller General
of the United States