

DOCUMENT RESUME

02971 - [A1932979]

[Award to Second Low Bidder]. B-188651. July 6, 1977. 3 pp.

Decision re: Fechheimer Bros. Co.; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law I.

Budget Function: General Government: Other General Government (806).

Organization Concerned: District of Columbia: Bureau of Materiel Management; S. Abrahams & Co., Inc.

Authority: 4. C.F.R. 20. 34 Comp. Gen. 364. B-157638 (1965).

The protester objected to the rejection of its low bid as nonresponsive. Award to the second low bidder, which offered the shortest delivery schedule, was not legally objectionable since the invitation provided for and the award was made to bidder offering the shortest delivery time if no acceptable bid offered delivery within 60 days. The low bidder did not offer delivery within 60 days. (Author/SC)

2979

02971

P.L.I
Cherkin

DECISION



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

FILE: B-188651

DATE: July 6, 1977

MATTER OF: **Fechheimer Brothers Company**

DIGEST:

Award to second low bidder which offered shortest delivery schedule is not legally objectionable since invitation provided for and award was made to bidder offering shortest delivery time if otherwise complying with specifications should no acceptable bid offering delivery within 60 days be received. Low bidder which inserted underlined phrase "Delivery: 60 calendar days from date of order & Material from Mill" in bid did not offer delivery within 60 calendar days.

Fechheimer Brothers Company (Fechheimer) protests the rejection of its low bid as nonresponsive and the subsequent award of a contract during the course of the protest to S. Abrahams & Co., Inc. (SACO), under solicitation No. 0025-AA-84-0-7-MC. issued by the Bureau of Materiel Management, Government of the District of Columbia (D.C. Government).

The solicitation requested bids for police, fire and other uniforms for the period of January 1, 1977, through December 31, 1977, or 1 year from the date of award, whichever is later. The bids were opened on February 15, 1977, with Fechheimer submitting the low bid for items Nos. 1-18. The bidders were required to submit a delivery date by inserting a number of calendar days from the date of order. Fechheimer submitted the following:

"Delivery: 60 Calendar Days from Date of Order & Material from Mill."

On March 21, 1977, the contracting officer rejected Fechheimer's bid as nonresponsive because Fechheimer had failed to conform to the essential requirement of the delivery clause to indicate firm calendar days for the period of delivery.

Fechheimer contends that it did not intend to modify its bid and for that reason used the conjunction "and" rather than "or." Fechheimer

B-188651

maintains that the statement was to clarify the bid due to a requirement in the solicitation that the supplier of the cloth submit to the D.C. Government a statement when the material would be available to the bidder for use in manufacturing the garments. Fechheimer argues that this aspect added a new dimension to the delivery clause and specifically made delivery of the garments dependent on when the manufacturer could deliver the material.

All bidders submitted bids predicated on using Raeford Worsted Company (Raeford), the stipulated brand name, as their supplier. Raeford submitted letters to the D.C. Government on January 11 and February 11, 1977. Initially, the D.C. Government was advised that the fabric could be furnished to the successful bidder in 6-8 weeks from receipt of a firm purchase order. Subsequently, Raeford advised the D.C. Government that the fabrics for items Nos. 1-18 could be supplied in 4-6 weeks from receipt of order.

The D.C. Government has taken the position that the supplier's letter was informational for the benefit and convenience of the Government and was to be used to determine the responsibility of the bidder. If the mill's delivery date clearly indicated that it would be impossible to meet the bidder's designated delivery schedule, the D.C. Government would have to reject the bidder on the basis of nonresponsibility.

By letter dated May 4, 1977, and received in our Office on May 9, 1977, Fechheimer contended that SACO's bid was nonresponsive for insertion of a delivery period of 60-75 calendar days from date of order. We note here that the only other bidder on the items in question set forth a 75-day delivery period from date of order.

Clause 23 of Special Conditions of the solicitation provides, as follows:

"* * * Delivery is required to be made in accordance with the delivery schedule below; provided, however, that should no acceptable bid offering delivery within said time be received, the District reserves the right to make award to the bidder offering the shortest delivery time and otherwise complying with the specifications.

"DELIVERY OF QUANTITIES SPECIFIED IN EACH PURCHASE ORDER WILL BE MADE WITHIN SIXTY (60) CALENDAR DAYS FROM DATE OF EACH PURCHASE ORDER. * * *"

B-188651

It is our view that, based upon Clause 23 to which no bidder took exception, the D.C. Government properly made the award to SACO since none of the bidders offered delivery within 60 days and SACO was the bidder which offered the shortest delivery time and otherwise complied with the specifications.

Although Fehheimer may have intended to conform to the terms of the solicitation by indicating a firm delivery period, by adding the words "& Material from Mill" to its number of calendar days (60), the protester clearly did not offer delivery within 60 days. The requirement that the supplier submit a statement as to material availability in no way detracted from the obligation of the bidder to deliver within the prescribed time. Although the D.C. Government questions whether Raaford's prebid-opening letters were binding on any bidder, the protester subscribes to the letters. Therefore, at best, Fehheimer's insertion in the bid would result in the addition of 4-6 weeks to 60 calendar days and in a less favorable light, the bid offered a delivery period incapable of being evaluated. Therefore, we have no legal objection to the award to SACO. See 34 Comp. Gen. 364 (1955); and B-157638, December 13, 1965.

Regarding Fehheimer's protest against the award to SACO before resolution of this protest, our Bid Protest Procedures, 4 C.F.R. part 20 (1977), provide in pertinent part:

"§20.4 Withholding of award.

"When a protest has been filed before award the agency will not make an award prior to resolution of the protest except as provided in the applicable procurement regulations. * * *"

The record contains the appropriate findings and determinations by the contracting officer.

In view of the foregoing, the protest is denied.


Deputy Comptroller General
of the United States