

DOCUMENT RESUME

02686 - [A1792809]

[Savings Achieved by Splitting Award]. B-188731. June 15, 1977.
3 pp.

Decision re: Engineering Research, Inc.; by Robert F. Keller,
Acting Comptroller General.

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

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

Budget Function: National Defense: Department of Defense -
Procurement & Contracts (058).

Organization Concerned: Department of the Navy: Naval Air
Systems Command.

Authority: A.S.P.B. 2-201(a), sec. C(v). B-170791 (1971).
B-185762 (1976). B-173907(1) (1971). 47 Comp. Gen. 658.

The protester objected to the agency's splitting of the award of the contract for several related items. Under paragraph 10(c) of Standard Form 33A, included in the solicitation, the Government may accept any item or group of items of any offer. An invitation for bids provision which states that bids must be submitted for "all quantities" does not mean that a bid covering more than one item is submitted on an "all or none" basis. The protest was denied. (Author/SC)

DECISION



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

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02686

FILE: S-188731

DATE: June 15, 1977

MATTER OF: Engineering Research, Inc.

DIGEST:

Under paragraph 10(c) of SF 33A the Government may accept any item or group of items of any offer, i.e., to split award on an item basis, and IFB provision which states that bids must be submitted for "all quantities" does not mean that a bid covering more than one item is submitted on "all or none" basis.

Engineering Research, Inc. (ERI) protests an award of a contract to any company other than ERI for the items called for under invitation for bids (IFB) No. K00019-76-B-0020.

The IFB, issued on February 3, 1977, by the Naval Air Systems Command (NASC), required delivery of identical quantities (2,625 sets) of wing assemblies (Item 0001), tail fin assemblies (Item 0002), related first article testing and related data for the SHRIKE missile. Six bids were received and opened on March 8, 1977. While ERI's total bid price for both items was the lowest received, a savings would be realized by splitting the award of these items.

The IFB contains Standard Form 33A, Solicitation Instructions and Conditions, and paragraph 10(c) of this form reads as follows:

"(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 SPECIFIED OTHERWISE IN HIS OFFER."

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Another pricing provision of the IFB on page 4-3 states that:

"Notwithstanding any statement in paragraph 10(c) of the Solicitation Instructions and Conditions (Standard Form 33A set forth in Section C hereof) to the contrary, offers shall be submitted on the basis of fulfilling all quantities called for in the Schedule." (Emphasis added.)

ERI construes the "all quantities" language in the latter provision as requiring an "all or none" bid. ERI believed that only the low aggregate bids for Items 0001 and 0002 would receive contract award. Consequently, ERI states that it should receive award of a contract for Items 0001 and 0002 and that split award to Hockley of Item 0001 is improper. Alternatively, ERI argues that the quoted provisions of the IFB create an ambiguity. ERI advises that had it known that separate awards were contemplated, it would have explicitly stated "all or none" in its bid. However, because of the "all quantities" language, ERI felt that insertion of an "all or none" statement in its bid was unnecessary.

We believe that ERI's interpretation of the above-quoted provisions of the IFB is in error. The first sentence of paragraph 10(c) reserves to the Government the right to split the items for award unless the offeror qualifies its offer. Additionally, the paragraph permits an offeror to offer less than the quantities specified in the solicitation "UNLESS OTHERWISE PROVIDED IN THE SCHEDULE." The provision requiring offers for "all quantities" does otherwise provide; it precludes an offeror from submitting a bid for quantities less than those specified in the IFB. Furthermore, the qualifying provision of the IFB requires that bids be submitted for "all quantities" and not for all items. Therefore, we believe that the first sentence of paragraph 10(c), which allows the Government to accept any item or group of items, remained in effect.

If an award is to be made in the aggregate, Armed Services Procurement Regulation (ASPR) § 2-201(a), section C(v) (1976 ed.) requires that a statement to that effect must be included in the IFB. The obvious

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intent of ASPR and Standard Form 33 is that clear language, not merely notice of implication, would be inserted in the IFB if award is to be made in the aggregate. Cf. B-170791, March 17, 1971. Here, the "all quantities" provision concerns itself with line item quantities and not the line items themselves. The "all quantities" language ensures that the Government does not have to make multiple awards for the same line item. This language, however, does not change paragraph 10(c) concerning the Government's right to make a separate award for each line item in the bid schedule. Therefore, we do not agree with ERI that the IFB was ambiguous in this respect.

Our Office consistently has read SF 33A to require award on the basis of the most favorable overall cost to the Government. 47 Comp. Gen. 658 (1968). Where multiple awards are not prohibited by the solicitation and result in the lowest overall cost to the Government, separate awards to different bidders who are low as to the item each is awarded, rather than an aggregate award to a single bidder, is proper. Huey Paper and Material, Stacor Corporation, B-185762, June 16, 1976, '76-1 CPD 382. We note that in at least one prior case ERI received an award for less than all items when a lower bidder on one item protested the agency's initial decision to make only one award. B-173907(1), December 22, 1971. Our examination of the protest file shows that a split award was made to ERI under solicitation clauses which were identical to those included in the instant case.

Accordingly, ERI's protest is denied.


Acting Comptroller General
of the United States