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UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

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OFFICE OF GENERAL COUNSEL

8-191146

MAY 3 1978

The Honorable Clarence D. Long
House of Representatives
200 Post Office Building
Chesapeake and Washington Avenues
Towson, Maryland 21204

Dear Mr. Long:

Reference is made to your letter dated January 18, 1978, to this Office concerning the statements made by H&M Fuel Company, Inc. (H&M) relating to the handling of bids by the Defense Fuel Supply Center (DFSC).

H&M contends that DFSC is violating the rights of small business by accepting "all or none" bids on line items for fuel deliveries to Government installations located in different states. It is H&M's position that such bids should only be accepted for deliveries to a single installation thereby permitting small business to effectively compete. Further, H&M states that the courts have disapproved of this type of bidding in Steuart Petroleum Company, et al. v. United States of America, U.S.D.C. D.D.C., Civil Action No. 77-1398, October 11, 1977.

H&M's complaint pertains to paragraph C95 of solicitation DSA609-77-B-0003 issued by DPSC for 1759 line items covering deliveries of fuel for installations located in Delaware, Indiana, Kentucky, Maryland, Ohio, Tennessee, Virginia, West Virginia and the District of Columbia for period commencing August 1, 1977 through July 31, 1978. This procurement was not set aside for small business. H&M submitted bids on 62 line items and was awarded a contract for 13 line items for \$146,647.

Paragraph C95 encourages bidders to bid on an aggregate or "tie-in" basis with other line items in the solicitation. These line items represent deliveries of fuel in each of the designated areas. DPSC maintains that this clause does not discriminate against small business but assists the Government in obtaining petroleum products at the lowest cost.

Further in this connection, DPSC explains that the subject clause grew out of its "Post, Camp and Station (PCS) program" by which the Department of Defense (DOD) and many other Federal agencies obtain their ground fuel (gasoline, heating oil, diesel fuel) requirements. Under the PCS program, DOD activities are generally required to submit all ground fuel requirements in excess of 10,000 gallons per year to DFSC. Non-DOD Federal organizations, such as the General Services Administration (GSA) and Post Offices also submit their requirements. It is reported that the program supports approximately 9,000 activities and involves 12,000 line items of fuel being delivered in the Continental United States, Alaska, Hawaii, Puerto Rico and the Virgin Islands.

One of the primary reasons for the PCS program and the participation of non-DOD Federal organizations in the program is to obtain lower prices through larger quantity procurements. The objective was cited in 1968 as one of the major reasons for DFSC assuming the responsibility for fuel requirements of Civil agencies from GSA. Further in this connection DFSC solicits and awards PCS requirements on a regional basis to obtain the best prices.

In 1976, a Defense Logistics Agency audit team reviewed procurement procedures of DFSC's PCS program. It found that DFSC solicited each type of fuel at each activity as a separate line item. Although "tie-in" bids were not rejected, the solicitations did not actively solicit "tie-in" bids. The team further stated that lacking "tie-in" bids, each line item is a separate requirement and the price break anticipated from large quantity procurements could not be fully realized. The team recommended that DFSC actively encourage "tie-in" bids for those line items in areas where such bids are feasible. In accordance with the audit team's recommendation the clause presently identified as C95 was approved for use in the PCS program.

We have held that it is always permissible for bidders to submit "all or none" or "tie-in" bids unless such bids are specifically prohibited. 35 Comp. Gen. 383 (1956). In this regard we have discouraged agencies from prohibiting the submission of "all or none" or "tie-in" bids because to do so may deny the Government the lowest price. 54 Comp. Gen. 395 (1974).

Based on the above we find no basis for holding that DPSC's policy of encouraging "all or none" or "tie-in" bids is improper. Regarding its impact on small business it is reported that small business concerns regularly take advantage of DPSC's policy and receive awards based on "tie-in" bids. For example, such an award was made to a small business, Roarda, Inc. under the IFB which is the subject of M&M's complaint.

The Steuart Petroleum case (copy enclosed) mentioned by M&M does not in any way concern the issue of "all or none" or "tie-in" bids. In that case the court issued a preliminary injunction setting aside DPSC's award to Roarda of certain line items under the subject IFB because of Roarda's use of an upwardly volatile price escalator in its bid.

We hope this information satisfies your needs.

Sincerely yours,

Paul G. Dembling

Paul G. Dembling
General Counsel

Enclosure