

Mr. Burkard



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Medevac Midamerica of Kansas, Inc.

File: B-237151.2

Date: February 28, 1990

Robert E. Duncan, II, Esq., for the protester.
E. L. Harper, Department of Veterans Affairs, for the agency.
Richard P. Burkard, Esq., Andrew T. Pogany, Esq.,
and Michael R. Golden, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Where an invitation for bids permits multiple awards and states that award will be based on the lowest overall cost to the government, a single award at a price more than the total of two awards plus the administrative costs for two contracts is improper. The Competition in Contracting Act of 1984 requires agencies to evaluate sealed bids based solely on the factors stated in the solicitation and to make award considering only price and price-related factors included in the solicitation.

DECISION

Medevac Midamerica of Kansas, Inc., protests the decision by the Department of Veterans Affairs (VA) to terminate the firm's contract for ambulance services, awarded under invitation for bids (IFB) No. 677-6-90, and to resolicit the requirement.

We deny the protest.

The IFB was issued on August 4, 1989. The IFB's schedule contained two types of requirements: services of emergency medical vehicles (line item 1) and non-emergency medical vehicles (line item 2), with each type of service subdivided into subline items for basic ambulance service, and trips beyond the city limits of Topeka, Kansas. In addition, the schedule contained separate line items for oxygen administered during transport and intravenous administration during transport and included estimated annual quantities for these items. The schedule also

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contained a separate line item for ambulance waiting time (on a per hour basis), with no estimate given. Finally, the IFB included a provision allowing for the evaluation of bids for multiple awards (Federal Acquisition Regulation § 52.214.22 (FAC 84-5)).^{1/}

Medevac and Jackson County, E.M.S, Inc., submitted the only bids under the IFB; Medevac's aggregate bid was \$205,000 and Jackson's was \$206,510. Medevac bid \$0.00 per hour for ambulance waiting time, while Jackson bid \$10.00. The VA awarded a contract for all services, based on the low total price, to Medevac on September 5, 1989. The contracting officer acknowledges that award could have been made at a lower total price by awarding the non-emergency services to Medevac for \$126,000, and the emergency and related services to Jackson for a total of \$77,510, even considering the \$250 administrative costs provided for in the IFB for multiple awards. The contracting officer determined, however, that the dollar amount difference (approximately \$1,400) between multiple awards and a single award to Medevac was too insignificant to justify the administrative burdens of making and administering two contracts for ambulance services. Consequently, VA awarded the contract to Medevac. That award was protested to our Office by Jackson.

In response to that protest, the VA concluded that the IFB was defective in that it did not contain an estimate for ambulance waiting time and that the evaluation scheme therefore did not ensure that award had been based on the lowest cost to the government. Accordingly, the VA advised our Office, on October 31, that it had decided to terminate Medevac's contract and issue a revised solicitation. We therefore dismissed Jackson's protest as academic. The agency subsequently terminated the contract for the convenience of the government. On November 13, Medevac protested to our Office the VA's decision to terminate its contract and reissue the IFB.

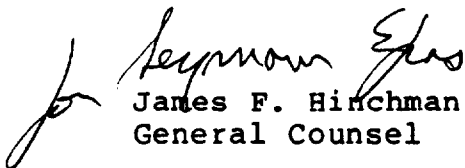
Medevac argues that since it bid \$0.00 per hour for ambulance waiting time and Jackson bid \$10.00 per hour for the same line item, Medevac's price would be low regardless of the number of hours provided as the estimate under a new IFB. The protester also contends it would be unreasonable to resolicit bids since bid prices have been exposed. Medevac requests that its entire contract be reinstated.

^{1/} The multiple award provision provided for awards for the items or combination of items that result in the lowest aggregate cost to the government, including assumed administrative costs of \$250 for each contract awarded.

In response, the agency asserts that the contracting officer's decision to make an aggregate award was improper since, in so doing, he considered factors not included in the solicitation. As stated, the contracting officer made an aggregate award even though multiple awards would have been less costly to the VA when using the \$250 administrative cost of multiple awards included in the solicitation for evaluation purposes. We agree with the agency that an aggregate award under the IFB in this situation was improper.

The Competition in Contracting Act of 1984 requires agencies to evaluate sealed bids based solely on the factors specified in the solicitation and to award a contract to the responsible source whose bid conforms to the solicitation and is most advantageous to the United States, considering only price and other price-related factors included in the solicitation. 41 U.S.C. §§ 253b(a) and (c) (Supp. IV 1986). Here, since the solicitation permitted multiple awards, VA should have selected that combination of bids which resulted in the lowest overall cost to the government--the only evaluation factor stated in the solicitation. The agency's failure to do so thus violated the statute. Adrian Supply Company--Reconsideration, 66 Comp. Gen. 367 (1987), 87-1 CPD ¶ 357. Consequently, we find the agency's decision to terminate the contract and resolicit bids to be proper.^{2/}

The protest is denied.


James F. Hinchman
General Counsel

^{2/} Since bids under the IFB have expired and since the protester does not, in any event, request a partial award, the only corrective action available to the agency was resolicitation of the requirement. While we recognize that prices have been exposed, impermissible competitive prejudice is not created where the resolicitation is required for compliance with federal procurement principles. Special Waste, Inc., 67 Comp. Gen. 429 (1988), 88-1 CPD ¶ 520.