



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

B-179253

40027  
October 4, 1973

The Honorable Arthur F. Sampson  
Administrator, General Services  
Administration

Dear Mr. Sampson:

This is in reply to the July 30, 1973, letter from the General Counsel, furnishing a report on the protest filed by Arndt and Day on behalf of Beelner and Thomas Furniture Manufacturers against the award of a contract to Fischer Chair Manufacturing, Incorporated (Fischer), under Invitation for Bids (IFB) FPMFH-M3-61072-A-5-25-73, issued by the Federal Supply Service, Washington, D. C.

The solicitation was for quantities of upholstered living room furniture. Item 1 called for 401 davenports and Item 2 called for 3,951 chairs, all to be delivered within 120 days after approval of preproduction samples. The IFB provided that "Award will be made in the aggregate by group" and that "prices must be submitted for each item within the group." An amendment to the solicitation defined "group" as "items 1 and 2 inclusive." The amendment also changed the time of delivery clause to require specified quantities of Item 1 and Item 2 to be delivered within 90 days and "additional" quantities of both items to be delivered within 120, 150, and 180 days following approval of preproduction samples.

At bid opening on May 29, 1973, it was determined that Fischer submitted the lowest aggregate bid but had neither returned nor acknowledged the amendment. The contracting officer, reasoning that Fischer's failure to acknowledge the amendment rendered its bid nonresponsive only to the 90 days delivery requirement, awarded a contract to Fischer for the quantities of Items 1 and 2 to be delivered within 120, 150, and 180 days, and awarded a contract to Beelner and Thomas for the quantities of Items 1 and 2 to be delivered within 90 days. It is reported that after bid opening the requirement for the Item 2 chairs was decreased by 1,200 and that this decrease was evenly apportioned among the 4 delivery increments, so that Fischer received an award for 301 davenports and

0 [H] ...  
BEST DOCUMENT AVAILABLE

419991

091376

B-179253

2,064 chairs and Bealner and Thomas received a contract for 100 davenportes and 687 chairs.

It is Arndt and Day's contention that the IFB provision calling for award in the aggregate meant that one award would be made for the total quantity in the group and that separate awards could not be made. On the other hand, your agency contends that the aggregate award provision meant award would be made "by way of 'grouping of items' and not by way of combining quantities under all items." It is further contended that interpreting this provision to require award of all quantities to one bidder would be inconsistent with Article 10(c) of Standard Form 33A, incorporated by reference into the solicitation, which states:

"(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 SPECIFIES OTHERWISE IN HIS OFFER."

We have recognized that Article 10(c) permits bidders to submit offers on quantities less than those specified in the invitation, and that "the quantity specified for delivery on each of several stated dates may \* \* \* be regarded as a separate subitem on which award can properly be made to the lowest bidder for that particular quantity and date." 48 Comp. Gen. 267, 270 (1968). However, Article 10(c) clearly states that bidders may submit offers on lesser quantities unless it is otherwise provided in the schedule. Here we think the IFB section captioned "METHOD OF AWARD", in which it was stated that "Award will be made in the aggregate by group," does otherwise provide, since it can reasonably be read to mean only that one award would be made for the total quantity within the group. The word "aggregate" is defined as "A mass, assemblage, or sum of particulars" (Webster's New International Dictionary, Second Edition); as "The entire number, sum, mass, or quantity of something; amount; complete whole" (Funk & Wagnalls New Standard Dictionary of the English Language); and as "the whole sum or amount" (Webster's Third New International Dictionary), and thus strongly suggests that one award would be made for the aggregate quantities ultimately awarded.

In addition, we think the general tenor of the various bid schedule provisions, which refer to "award" in the singular, indicates an intention to award a single contract. 47 Comp. Gen. 233 (1967).

BEST DOCUMENT AVAILABLE

Although the use of the term "award" would not require such an interpretation if it would be inconsistent with other provisions of the invitation, 48 Comp. Gen. 381 (1968), here we think the other provisions are not inconsistent with the interpretation that only one contract was intended.

Although it is our belief that the language of the invitation provided for a single, aggregate award, we cannot recommend termination of the Fischer contract and award of the entire quantity of davenports and chairs to Bealner and Thomas. It is clear from the record that your agency did not intend to impose a single-award restriction and does not have any justification for using it on this procurement. Therefore, the use of the aggregate award provision must be regarded as an unwarranted restriction on the maximum practicable competition required by FPR 1-1.301-1, see 52 Comp. Gen. 47 (1972), and thus any aggregate award at a price higher than could be obtained from making more than one award would be improper. Here, of course, award of the total quantity to Bealner and Thomas would result in a total price significantly in excess of the current cost of the two awards.

Furthermore, we do not believe that termination of both awards would serve any useful purpose in this case, since the awards in fact were made without regard to the aggregate award restriction and there is no indication that either party was prejudiced as a result. In this connection, we note that Fischer has started to make deliveries and that Bealner and Thomas received approval of its pre-production samples and is expected to make its initial shipment on or about October 15, 1973. In view of these circumstances, we will not interpose an objection to the awards that were made. However, we strongly urge that steps be taken to insure that future solicitations contain language that clearly reflect the intentions and minimum requirements of your agency.

Sincerely yours,

Paul G. Dembling

For the Comptroller General  
of the United States