



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

B-179282

November 15, 1973

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New York Funeral Service Company,
Incorporated
362 Van Brunt Street
Brooklyn, New York 11231

Attention: Mr. Richard A. Santora, President

Gentlemen:

We refer to your letter of September 17, 1973, and related correspondence, in which you protest the award of a contract to Universal Funeral Chapel, Incorporated (Universal), under invitation for bids (IFB) No. DAER03-73-E-0095, issued on May 25, 1973, by the United States Army, Fort Hamilton, New York.

The solicitation was for a one-year contract to provide services and equipment relating to the care of the remains of deceased U.S. Army personnel, as listed in the solicitation schedule on eleven separate items. Bids were opened on June 22, 1973, and, based on the lowest total aggregate price, the contracting officer made the award to Universal on June 28, 1973. You were the second lowest bidder.

You protest primarily on the following grounds: 1. Universal's unit bid price on item 7 (shipping case for Type I and II caskets, class 7, standard size) of \$40 is below the manufacturing cost of the case; 2. Total aggregate price should not have been used as the only determining factor in making the award.

Regarding your first contention, you have submitted evidence to the effect that the manufacturing cost of the shipping case is in excess of \$40 per case and the wholesale cost is in excess of \$50. However, the record shows that the contracting officer found Universal to be a responsive and responsible bidder and obtained verification that there was no mistake in Universal's bid. The fact that Universal's bid on item 7 may have been below wholesale cost or even below manufacturing cost would not, therefore, afford a sufficient basis to question the award. 49 Comp. Gen. 311, 315 (1969); 50 Comp. Gen. 50 (1970).

Your second contention involves two questions--the propriety of basing award on total aggregate price rather than individual item prices,

[Protest Alleging Awardee's Price Was Below Manufacturing Cost]

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and the propriety of basing award on price without regard to other factors.

Armed Services Procurement Regulation (ASPR) 22-502 requires the inclusion of the following provision in every solicitation for mortuary services:

"AWARD TO SINGLE BIDDER. Subject to the provisions contained herein, award shall be made to a single bidder. Bids must include unit prices for each item listed in order that bids may properly be evaluated. Failure to do this shall be cause for rejection of the entire bid. Bids shall be evaluated on the basis of the estimated quantities shown and award shall be made to that responsible bidder whose total aggregate price is low."

This provision reflects a determination by the Department of Defense that a single award is necessary to assure that services of such a sensitive nature are carried out with proper dignity. The provision was set forth in Section D of the IFB and you were thus placed on notice as to the proposed basis for award. There was therefore no impropriety in making a single award based on total aggregate price as opposed to multiple awards based on individual item prices. Further, your contention in this respect was not raised prior to bid opening and thus is untimely. See 20 CFR 20.2(a), requiring that allegations of impropriety in an IFB which are apparent prior to bid opening be filed with this Office prior to bid opening.

Regarding price as the determining factor, 10 U.S.C. 2305(c) provides that award shall be made "to the responsible bidder whose bid conforms to the invitation and will be the most advantageous to the United States, price and other factors considered." This provision appears in the IFB as paragraph 10(a) of Standard Form 33A. It has been our view that the phrase "other factors considered" does not generally permit deviation from the principle that award must be made to the lowest responsive and responsible bidder. See 37 Comp. Gen. 550 (1958). Therefore, award was properly made to Universal as the low responsive and responsible bidder without regard to any other factors.

Finally, you question the entry "Will be cited on each delivery order" appearing in item 23 (Accounting and Appropriation Data), Section B, page 1

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of the IFB (Standard Form 33). This refers to codas used by Army finance personnel to identify the appropriations under which the contract is funded, and has no bearing on the bidding or award procedure.

For the reasons set forth herein, your protest is denied.

Sincerely yours,

Paul G. Deabling

For the Comptroller General
of the United States