

BEFORE THE  
MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeal of  
HANOVER UNIFORM CO.,  
DIVISION OF SANFORD SHIRT CO., INC. )  
 ) Docket No. MSBCA 1059  
 )  
Under DGS Request to Bid No. P11322 )

April 13, 1982

Award of Contracts - State's Best Interest-Lowest State Price — In competitive sealed bid procedures under Art. 21, Md. Ann. Code, § 3-202(g) and COMAR 21.05.02.13, the State's best and only interest is to obtain all goods and services at the lowest possible price or evaluated price, and so long as this result is achieved, contract award may be made by item, groups of items, or total bid where the IFB so provides.

Award of Contracts - Objectively Measurable Criteria — Only criteria set forth in the invitation for bids in an objectively measurable way may be considered by the procurement officer in making contract award based on lowest evaluated bid price in a competitively advertised procurement.

Award of Contracts - Lowest State Cost — Where the State, under the criteria set forth in its invitation for bids, could have obtained a group of items at the lowest possible cost by making split awards, the procurement officer contravened Maryland law in awarding a single contract.

APPEARANCES FOR THE APPELLANT:

Mr. Jay Mogosky  
Hanover Uniform Co.,  
Division of Sanford Shirt Co., Inc.,  
Baltimore, Maryland

APPEARANCES FOR THE RESPONDENT:

Varda N. Fink  
Assistant Attorney General  
Baltimore, Maryland

OPINION BY MR. KETCHEN

This appeal is from a final decision issued by a Maryland Department of General Services (DGS) procurement officer denying Appellant's protest of the award of a single contract to the Balco Uniform Cap Corporation (Balco) for the supply of uniforms, including toppers, shirts, summer hats, ties and trousers. Appellant contends that split awards should have been made so as to obtain the uniforms and accessories at the lowest price to the State. Appellant thus requests that we order DGS to now take the necessary steps to award a contract to Appellant as the lowest bidder for the supply of shirts.

Findings of Fact

1. On September 28, 1981, DGS issued an invitation for bids (IFB) for the supply of uniforms for the Department of Public Safety and Corrections. These uniforms were to consist of the following items:

<u>Item</u>	<u>Quantity</u>	<u>Unit</u>
Tuffy Topper	600	ea.
Shirts	4,335	ea.
Summer Hats	1,250	ea.
Ties	1,445	ea.
Trousers	2,890	ea.

2. Bidders were to quote a unit price for each item they desired to furnish. However, bidders were advised by paragraph 2 of the IFB Instructions To Bidders that:

This solicitation implies no obligation on the part of the State of Maryland. The State reserves the right to increase or decrease the quantities of any materials, equipment, or supplies. The State reserves the right to award by item, groups of items, or total bid. The State reserves the right to accept or reject any and all bids in whole or in part. (Under scoring added.)

3. A bid submitted by Balco, in the amount of \$156,326, was determined to be the lowest total bid received for all items solicited.

4. Appellant submitted bids only for the supply of shirts and ties. Appellant's bid for shirts, however, was the lowest received for that item and was \$2,210.85 below Balco's bid on the same item.

5. A single contract award for all items required under the IFB was made to Balco. When asked, during the hearing in this appeal, why a separate award was not made to Appellant for the supply of shirts, the DGS procurement officer replied as follows:

Because one of the special conditions that would be required of the successful contract bidder would be to take measurements at different sites at the institutions. This is a problem with Corrections. We have been through this before, because all of the security personnel are on shift work, and it could necessitate the payment of overtime if the time was not convenient on the State's part or on the bidder's part.

<sup>1</sup>The difference between Appellant's bid and the Balco bid on the shirts item is computed as follows:

Balco's bid	-- 4,335 shirts at \$ 2.34 ea. =	\$53,493.90
Appellant's bid	-- 4,335 shirts at \$11.83 ea. =	\$51,283.05
		<u>\$ 2,210.85</u>

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...it is in the best interest of the State, in my judgment, on this transaction, that the [State] deal with one supplier to minimize any inconvenience to the institutions. (Tr 10-11)

6. The DGS procurement officer also testified that split awards would have been considered only if total bids had not been received or it otherwise appeared to be in the State's best interests to award more than one contract. (Tr 12-13) In making this determination, the DGS procurement officer further testified that his concern was whether a substantial savings would be realized by making split awards. (Tr 13)

7. The DGS procurement officer concluded that the savings to be realized by making a separate award for the supply of shirts would be exceeded by the increased administrative costs resulting from a split award. When asked, during the hearing, to itemize these increased administrative costs, the procurement officer only could identify a \$50 cost for the processing of an additional purchase order. (Tr 22) The procurement officer did consider, however, the potential for additional overtime costs at the Department of Public Safety and Corrections when making his decision to award a single contract. (Tr 14) These additional overtime costs admittedly would be dependent upon whether different contractors could be scheduled to take fittings of Department of Public Safety and Corrections personnel simultaneously.

8. On December 14, 1981, Appellant protested the award of a contract to Balco. In so doing, Appellant asserted that, as low bidder for the shirt item, it was entitled to a contract award under Maryland law.

9. On January 5, 1982, the DGS procurement officer issued a written final decision denying Appellant's bid protest. A timely appeal thereafter was filed with this Board on January 13, 1982.

#### DECISION

Under the terms of the IFB, DGS expressly reserved the right to award a contract by item, groups of items, or total bid. In exercising this right, DGS contends that its procurement officer had discretion to consider the advantages or disadvantages that might result from making more than one award and, accordingly, to act in the best interests of the State.

Maryland law requires that the award of a contract, under a competitive sealed bid procedure, be made "...to the responsive and responsible bidder whose bid is either the lowest bid price or the lowest evaluated bid price after all approvals required by regulation have been obtained." Art. 21, Md. Ann. Code, § 3-202(g) (1981 Repl., Vol.). This statutory requirement further has been implemented by COMAR 21.05.02.13<sup>2</sup> which provides that:

"A. The contract is to be awarded to the responsive and responsive bidder whose bid meets the requirements and evaluation criteria set forth in the invitation for bids,

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<sup>2</sup>8:9 Md. R. S-48 (May 1, 1981); Art. 21, Md. Ann. Code, § 3-202(g).

and is either the lowest bid price or lowest evaluated bid price. A bid may not be evaluated for any requirement or criterion that is not disclosed in the invitation for bids.

- "B. Bids shall be evaluated to determine which bidder offers the lowest cost to the State in accordance with the evaluation criteria set forth in the invitation for bids. Only objectively measurable criteria which are set forth in the invitation for bids shall be applied in determining the lowest bidder. The State reserves the right to make the award by item, or groups of items, or total bid if it is in the best interest of the State to do so unless the bidder specifies in his bid that a partial or progressive award is not acceptable."

In reading the foregoing regulation and statute together, we conclude that under competitive sealed bid procedures, the State's best and only interest is to obtain all needed goods and services at the lowest possible price or evaluated price. Accordingly, in exercising the right to make an award by item, or groups of items, or total bid, a State procurement officer is constrained to act in a manner which will accomplish this result. Compare Publicker Industries, Inc., Comp. Gen. Dec. B-134074, 37 Comp. Gen. 330 (1957).

In determining the lowest evaluated bid, only those criteria, set forth in the IFB, in an objectively measurable way, may be considered by the procurement officer. See COMAR 21.01.02.32,<sup>3</sup> Art. 21, Md. Ann. Code, § 3-101(e). Danielis-Hawaii, Ltd., Comp. Gen. Dec. B-162092, 47 Comp. Gen. 233, 234, 235 (1967). While the record in this appeal shows that the State would have incurred some additional administrative costs if more than one contract was awarded for the supply of uniforms, those administrative factors and costs were not set forth in the IFB. Accordingly, the DGS procurement officer was not permitted to consider them under Maryland law.

Given the bids received by DGS under the criteria set forth in the IFB for uniforms and accessories, the lowest price to the State would have been realized by awarding separate contracts to Balco and Appellant. We conclude, therefore, that the DGS procurement officer contravened Maryland law in awarding a single contract to Balco for the supply of uniforms and accessories at a higher cost to the State. The severable portion of the Balco contract requiring the supply of shirts is therefore a nullity under the provisions of COMAR 21.03.01.OIB.<sup>4</sup>

Since there is no allegation that Balco acted in bad faith in this matter, Balco should be compensated, in the manner provided for under the Termination For Convenience clause, for the costs it has incurred in preparing to supply the shirts. A new contract also should be awarded to Appellant for the supply of shirts at the price previously quoted.

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<sup>3</sup>8:9 Md. R. S-9 (May 1, 1981).

<sup>4</sup>8:9 Md. R. S-40 (May 1, 1981).