



**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** Action Mobile Transportation, Inc.

**File:** B-275427.2

**Date:** March 21, 1997

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Jacob B. Pompan, Esq., Pompan, Ruffner & Werfel, for the protester.  
J. Randolph MacPherson, Esq., Sullivan & Worcester, for Medi-Cars of Ohio, the intervenor.  
Phillipa L. Anderson, Esq., Philip S. Kauffman, Esq., and Merilee D. Rosenberg, Esq., Department of Veterans Affairs, for the agency.  
Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Under an invitation for bids for wheelchair van and bed van services that does not require an aggregate award, bid for only some of the severable items solicited is responsive and multiple awards are required where such awards would result in the lowest evaluated total price for the services.

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## DECISION

Action Mobile Transportation, Inc. protests an award to Medi-Cars of Ohio under invitation for bids (IFB) No. 541-35-97, issued by the Department of Veterans Affairs (VA) Medical Center, Brecksville, Ohio, for wheelchair van and bed van services. Action Mobile protests the rejection of its bid as nonresponsive.

We sustain the protest.

The IFB, issued on August 22, 1996, contemplated the award of firm, fixed-price contract(s) for 1 year with 2 option years. The van services would be used to transport beneficiaries of the VA Medical Center (VAMC) between VA facilities and other locations. The bid schedule stated:

". . . Contractor to ensure that eight (8) vehicles will be made available to the VAMC on workdays between the hours of 6:00 A.M. to 6:00 P.M. At least one (1) vehicle shall remain available during off tour hours."

The bid schedule solicited prices for three categories of van services: (A) seven wheelchair vans between the hours of 6:00 a.m. to 6:00 p.m.; (B) one wheelchair van for nights, weekends and holidays; and (C) one bed van between the hours of 6:00

a.m. to 6:00 p.m. Each of these categories listed several types of charges, corresponding estimated quantities, and spaces for bidders to insert respective unit and extended prices for base and option years. The schedule also provided spaces for bidders to insert the total price for each of the base and option years. Category C also stated:

"Bed Van Vehicle shall be included in the total vehicle request of eight (8)."

The instructions to bidders at Section L of the IFB included the provision at Federal Acquisition Regulation (FAR) § 52.214-10 "Contract Award - Sealed Bidding (JUL 1990)" (hereafter "the award clause"), which stated in pertinent part:

"(c) The Government may accept any item or group of items of a bid, unless the bidder qualifies the bid by specific limitations. *Unless otherwise provided in the Schedule, bids may be submitted for quantities less than those specified. 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 bidder specifies otherwise in the bid.*" [Italics in original.]

Section M of the IFB included the provision at FAR § 52.214-22, "Evaluation of Bids for Multiple Awards (MAR 1990), which stated:

"In addition to other factors, bids will be evaluated on the basis of advantages and disadvantages to the Government that might result from making more than one award (multiple awards). It is assumed, for the purpose of evaluating bids, that \$500 would be the administrative cost to the Government for issuing and administering each contract awarded under this solicitation, and individual awards will be for the items or combinations of items that result in the lowest aggregate cost to the Government, including the assumed administrative costs."

VA received six bids by bid opening on September 23. Two of the bids, including the one submitted by Action Mobile, provided prices only for categories A and B.<sup>1</sup>

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<sup>1</sup>At the time of bid opening, the contracting officer announced that bidders were required to bid on all items or their bids would be ruled nonresponsive. The two bidders submitting bids on less than all the items were not present at bid opening. The record does not show that any of the bidders present at bid opening either altered their bids in response to the contracting officer's statement or otherwise relied on this statement in preparing their bids.

The total prices for the base and option years for each category and the total bid prices were as follows:

Bidder <sup>2</sup>	A	B	C	Total
Action Mobile	\$ 293,250	\$ 22,350	No Bid	\$ 315,600
Crest	405,150	49,200	No Bid	454,350
Medi-Cars	436,500	27,000	\$ 77,250	540,750
American	531,750	33,000	55,875	620,625
Able	516,750	88,500	55,800	661,050
Hopkins	1,156,250	141,000	303,225	1,600,475

None of the bids indicated that they were on an "all or none" basis. The contracting officer rejected the bids of Action Mobile and Crest as nonresponsive and, on September 25, awarded a contract to Medi-Cars for all 3 categories at a total evaluated price of \$540,750.

Crest protested the award to VA on October 1. VA then determined that, pursuant to the FAR § 52.214-22 multiple award evaluation provision, it should have considered multiple awards in evaluating the lowest price available to the government.

On October 30, VA awarded a contract for wheelchair van services (categories A and B) to Action Mobile at an evaluated price of \$315,600 and to Able for bed van services at an evaluated price of \$55,800, for a combined total evaluated price of \$371,400. By written notice of October 30, Able declined the award. VA then awarded a contract for bed van services to American; American also declined the award. By letters of November 6 to Action Mobile and Medi-Cars, and letter of November 7 to Able, VA stated that the award to Medi-Cars would be terminated effective December 6 and that the awards to Action Mobile and Able would be effective December 7.

On November 12, Medi-Cars protested to our Office. By letters of December 11 to Medi-Cars and Action Mobile, the agency stated that it had reviewed the solicitation and determined that the partial bids submitted by Action Mobile and Crest were nonresponsive and that the aggregate award to Medi-Cars was being reinstated; the

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<sup>2</sup>The complete names of the bidders not previously identified are Crest Transportation Services, American Wheelchair Coach, Able Ambulette, and Hopkins Airport Limousine Service, Inc.

letter to Action Mobile stated that its contract was terminated effective immediately. Medi-Cars then withdrew its protest and Action Mobile filed this protest.

Action Mobile alleges that the IFB permitted partial bids and thus its bid on only two of the three categories is responsive. Action Mobile also alleges that VA must make multiple awards here because awards involving a contract to Action Mobile for categories A and B, and a contract to Able (or even to American or Medi-Cars) for category C, would result in a much lower cost to the government than would an aggregate award.<sup>3</sup> We agree.

Where the award clause in an IFB permits the government to accept any item or group of items in a bid, and the solicitation does not otherwise specifically require an aggregate award, multiple awards may be made. Weather Experts, Inc., B-255103, Feb. 9, 1994, 94-1 CPD ¶ 93; Talbott Dev. Corp., B-220641, Feb. 11, 1986, 86-1 CPD ¶ 152; Goodman Ball, Inc., B-217318, Mar. 25, 1985, 85-1 CPD ¶ 348. Where the solicitation permits multiple awards, a bid on less than all items is responsive for that reason. Weather Experts, Inc., *supra*; HFS Inc., B-246018, Feb. 7, 1992, 92-1 CPD ¶ 160. Multiple awards are required under an IFB where multiple awards are permitted by the solicitation and would result in the lowest overall cost to the government. Weather Experts, Inc., *supra*; HFS Inc., *supra*.

Here, the award clause permitted multiple awards, stating that the agency could "accept any item or group of items of a bid," and the IFB did not otherwise specifically prohibit multiple awards. Moreover, the FAR § 52.214-22 multiple award evaluation provision explicitly stated that "bids will be evaluated on the basis of advantages and disadvantages to the Government that might result from making more than one award (multiple award)."<sup>4</sup> Since the IFB did not prohibit partial bids, VA improperly rejected Action Mobile's bid as nonresponsive. Moreover, since

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<sup>3</sup>Action Mobile also alleges that contracts for bed van services are contrary to the laws of the state of Ohio. This protest is untimely and will not be considered as it concerns an impropriety apparent on the face of the IFB which had to be protested prior to bid opening. Bid Protest Regulations, § 21.2(a)(1), 61 Fed. Reg. 39039, 39043 (1996) (to be codified at 4 C.F.R. § 21.2(a)(1)).

<sup>4</sup>This clause is required by FAR § 14.201-6(q) (FAC 90-31) to be included in all solicitations for which it is determined that multiple awards might be made. We have held that even where the multiple award evaluation provision is not included in the solicitation as required by the FAR, if a solicitation contains an award clause with terms permitting partial bids and multiple awards, a clear prohibition of partial bids or multiple awards must be stated in the IFB in order to override the terms of the award clause. Talbott Dev. Corp., *supra*; Goodman Ball, Inc., *supra*; Granite State Machine Co., Inc., B-199644, Nov. 26, 1980, 80-2 CPD ¶ 396.

multiple awards to Action Mobile and any of several other bidders will result in the lowest cost to the government even after application of the \$500 per contract multiple award factor, an aggregate award is improper. See Weather Experts, Inc., supra; HFS Inc., supra.

VA and Medi-Cars allege that the language and tenor of the IFB contemplated an aggregate award. Specifically, the language of the bid schedule required bidders to submit bids on all three categories, and stated that the "contractor" (singular as opposed to plural) is "to ensure that eight vehicles will be made available" and "[o]ne [b]ed [v]an [v]ehicle shall be included in the total vehicle request of eight." Also, the bid schedule provides space for a total price for all three categories, but not spaces for the total prices of each category.

Where, as here, the IFB contains an award clause permitting partial awards, the use of singular terminology in the solicitation does not preclude multiple awards; rather, clear language is required to override the award clause's explicit provision for award by item. Talbott Dev. Corp., supra; Goodman Ball, Inc., supra; Granite State Machine Co., Inc., supra. Were the solicited items are severable, even the use of terms in a solicitation which are applicable only to aggregate awards, but which do not prohibit multiple awards, do not override the specific terms of the award clause and the multiple award evaluation provision. TAAS Israel Military Indus. Ltd., B-258039.3; B-258039.4, Jan. 23, 1995, 95-1 CPD ¶ 32; Times Fiber Communications, Inc., B-216614, Mar. 19, 1985, 85-1 CPD ¶ 322.

Here, we find that not only does the IFB not specifically prohibit partial bids or multiple awards, so as to override the unambiguous language in the award clause and multiple award evaluation provision, but the terms of the IFB otherwise provide no basis for concluding that these vans must be provided by the same contractor or that the categories of vans are otherwise not severable from one another. The bid schedule's references to the bed van being one of the eight vehicles of which a contractor is to make available on weekdays, when considered together with the remainder of the bid schedule and the award clause, reasonably can only mean that the contractor or contractors must provide seven wheelchair vans and one bed van for a total of eight vans on weekdays. Since category A is for seven wheelchair vans on weekdays and category C is for one bed van for weekdays, these categories can be severed and the agency is still assured of the availability of the eight vans required on weekdays. Category B requires one wheelchair van on nights, weekends and holidays, so it too can be severed and the agency's requirements will still be met.

Also, the fact that total prices for each category of services were not requested, but only the total prices for the base and option years, does not contravene the explicit language in the award clause and multiple award evaluation provision authorizing partial bids and multiple awards; the bid schedule details the unit prices for the

services to be provided under each category, such that the bid price for each category can be readily determined. See TAAS Israel Military Indus., Ltd., supra; Times Fiber Communications, Inc., supra.

Thus, the tenor of this IFB is not that only an aggregate award will be made. The government has the right to make separate awards for severable portions of bids where the bids did not contain specific qualifying language, such as "all or none." Engineering Research, Inc., B-188731, June 15, 1977, 77-1 CPD ¶ 431; see Goodman Ball, Inc., supra. Accordingly, such bidders are bound to perform the separate awards.<sup>5</sup> See 49 Comp. Gen. 395 (1969).

We recommend that the agency terminate either all the services or the category A and B services in Medi-Cars' contract and award a contract for the category A and B services to Action Mobile. (The agency should determine the most appropriate manner to contract for the services under category C.) We also recommend that the agency pay Action Mobile its cost of filing and pursuing this protest, including attorneys' fees. Bid Protest Regulations, § 21.8(d)(1), 61 Fed. Reg. 39039, 39046 (1996) (to be codified at 4 C.F.R. § 21.8(d)(1)). The protester should fill its claim for costs with the contracting agency within 60 days of receiving this decision. Bid Protest Regulations, § 21.8(f)(1), supra.

The protest is sustained.

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of the United States

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<sup>5</sup>Although Medi-Cars alleges that it has allocated the cost of providing bed van services across all of the bid items, this is not a basis to except it from its obligation to perform under any of the categories if multiple awards were made. See Goodman Ball, Inc., supra (multiple awards upheld even though one awardee alleged that its costs were shared across all of its bid items).