



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

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B-178223

May 23, 1973

The Honorable Earl L. Butz
The Secretary of Agriculture

Dear Mr. Secretary:

By letter dated April 23, 1973, and prior correspondence, Mr. Robert Schechter protested the rejection of his bid as nonresponsive under invitation for bids (IFB) R6-6-73-29, issued by the United States Forest Service, United States Department of Agriculture. The bid was rejected because he failed to include the required bid guarantee with his proposal.

The IFB invited bids for tree planting in the Mt. Hood National Forest, Oregon. The solicitation was divided into 15 bid items. Bidders were permitted to bid on any number of these items. Schechter submitted bids on items 1-4 in the following amounts:

<u>Item</u>	<u>Amount</u>
1	\$ 4,792.00
2	3,804.00
3	3,107.00
4	1,711.00
Total 4 items	<u>\$13,414.00</u>

Clause 20 of the Supplemental Instructions and Conditions to SF 33A provided in pertinent part:

Each contractor shall submit with his proposal, security in the amount of 20% of his total offer (when total exceeds \$5,000.00). Failure to furnish security in the proper form and amount, by the time set for opening may be cause for rejection of the offer.

Since Schechter's total offer was \$13,414 and he did not submit a bid guarantee, the contracting officer rejected his bid as nonresponsive.

The record indicates, however, that Schechter was the low bidder only on item 1. Since Schechter's bid on item 1 was \$4,792, and since the IFB required a bid guarantee only if the "total offer" exceeded

[Protest of Bid Rejection as Nonresponsive]

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\$5,000, we do not believe that the bid should have been rejected for failure to include a bid guarantee. We have recognized that a bid containing a deposit which is insufficient to cover the total bid, but which is sufficient to cover those items on which the bidder is the low bidder, may be accepted "so long as division of the award would not be impracticable or contrary to stated limitations in the bid or the invitation." 39 Comp. Gen. 617, 618 (1960); see also B-149734, October 2, 1962. The fact that Schecter also bid on items 2, 3 and 4 was not material and should have been disregarded for purposes of the bid guarantee since he was not the low bidder on these items. Accordingly, we find that the low bidder was improperly rejected on item 1.

We note, however, that the contract for item 1 was awarded on April 12, 1973, to Paul Randall. We have been advised that work under the contract has already begun. Since the contract time is only 60 calendar days, we do not think that it is in the best interest of the Government to disturb the contract.

Sincerely yours,

PAUL G. DEMBLING

For the Comptroller General
of the United States