Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Sonic Dry Clean, Inc.

File: B-275929

Date: April 21, 1997

Brian A. Darst, Esq., Andrew D. Irwin, Esq., and Marcia L. Stuart, Esq., Howrey & Simon, for the protester.
Col. Nicholas P. Retson, Capt. Philip T. McCaffrey, and Lt. Veronica S. Hale, Department of the Army, for the agency.
Susan K. McAuliffe, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly accepted awardee's bid despite alleged irregularities in the bid regarding acknowledgement of amendments, completion of procurement integrity certification, and compliance with statement of work requirements is denied where bid package reasonably provided no basis for contracting officer to question the responsiveness of the bid.

DECISION

Sonic Dry Clean, Inc. protests the award of a contract to James L. Moller under invitation for bids (IFB) No. DAKF04-96-B-0027, issued by the Department of the Army for diesel air-filter cleaning services at Fort Irwin, California. Sonic challenges the agency's affirmative determination of the awardee's responsibility and the responsiveness of the awardee's bid.

We deny the protest.

The IFB, issued on August 26, 1996, contemplated the award of a firm, fixed-price contract for a base period with 4 option years to the low responsive, responsible bidder. The IFB was amended prior to bid opening primarily to change the statement of work and bid schedule, provide information regarding the filters, and to add/delete certain other solicitation provisions. Four bids were received by the amended November 25 bid opening time. Moller submitted the apparent low bid, including all option years (at $1,323,344.10); Sonic submitted the apparent second low bid (at $1,348,837.50). After conducting an informal survey of Moller's responsibility, which focused primarily on Moller's experience on construction-related contracts performed by his company, Moller Enterprises, the agency awarded a contract to Moller on December 20. This protest followed.

Sonic's initial protest contentions relate to the agency's affirmative determination of Moller's responsibility and are based upon telephone conversations before and after award in which an employee of the awardee, apparently pursuing the possibility of awarding a subcontract to Sonic, requested information from the protester about filter cleaning services (and Sonic's filter cleaning abilities) and, the protester alleges, admitted that the awardee had insufficient knowledge of how to perform the required work. Our Office will only review a challenge to an agency's affirmative determination of responsibility where there is a showing of possible bad faith on the part of the agency or that definitive responsibility criteria have not been met. 4 C.F.R. § 21.5(c) (1997); King-Fisher Co., B-236687.2, Feb. 12, 1990, 90-1 CPD ¶ 177, at 2. The information furnished by the protester--relating to Moller's seeking a subcontractor to perform the work--does not show that the agency acted in bad faith in making its affirmative determination of responsibility.[1]

Upon receipt of the agency's protest report, which included a copy of the Moller bid (not previously available to the protester) and related contract file documents, Sonic amended its protest. Sonic contends that the Moller bid should be rejected as nonresponsive for Moller's failure to adequately acknowledge solicitation amendments, execute the procurement integrity certification, and clearly identify the bidding entity.

As stated above, the IFB was amended prior to award primarily to change the statement of work and revise the bid schedule. The amendments submitted with Moller's bid were signed by James T. Ewing, a supervisor employee of James L. Moller, and were dated November 23; the bid, which included the amendments and revised bid schedule, was signed by James L. Moller and was also dated November 23. The protester contends that since Mr. Moller did not sign the amendments himself, the bidder failed to properly acknowledge receipt of the material amendments and the bid must be rejected as nonresponsive. The agency reports, however, that Moller's bid signed by Moller contained the amendments and

---

[1]Sonic also protests that the awardee's bid should be rejected as nonresponsive for failure to comply with material solicitation requirements included in the IFB's statement of work. The Moller bid, however, took no exception to the IFB requirements and is therefore responsive. The descriptive literature provided by Moller after bid opening during the agency's review of the bidder's responsibility regarding its proposed subcontractor's process was submitted and considered only in assessing the bidder's responsibility and is not part of the bid. To the extent Sonic takes issue with the agency's consideration of this information, it pertains to a matter of responsibility for which no showing of bad faith has been made. TLC Sys., B-231969, Sept. 13, 1988, 88-2 CPD ¶ 238, at 2. Further, whether Moller complies with the stated performance requirements is a matter of contract administration not for our review. 4 C.F.R. § 21.5(a).

that the amended bid schedule was completed and submitted with the bid. Consequently, regardless of Ewing's authority, the amendments were constructively acknowledged by the bidder, Moller. Bonded Maintenance Co., Inc., B-235207, July 14, 1989, 89-2 CPD ¶ 51,at 6; First Fed. Data Serv., B-216487, Dec. 21, 1984, 84-2 CPD ¶ 685,at 2. Since the bid shows that the bidder received the amendments and that the bidder is bound to perform in accordance with the terms of those amendments, the protester's challenge to the propriety of the bidder's acknowledgment of receipt of the amendments provides no basis to question the responsiveness of the bid.[2]

The IFB, as amended, contained an abbreviated procurement integrity certification (as part of the consolidated list of representations and certifications of Federal Acquisition Regulation (FAR) § 52.212-3 regarding commercial item procurements) in which the person responsible for the preparation of the offer was to certify that "I" either have no information or that "I" have disclosed information to the contracting officer concerning a violation or possible violation of procurement integrity law and regulation that may have occurred during the conduct of this procurement. James T. Ewing signed the required abbreviated procurement integrity certification (stating that he had no such information) submitted with the Moller bid.[3] Sonic contends that the Moller bid should be rejected as nonresponsive because Mr. Moller did not sign the abbreviated procurement integrity certificate himself. Sonic contends that the bid does not conclusively demonstrate that Ewing had the authority to bind the bidder to the terms of the certification and that the contracting officer should have questioned Ewing's authority to sign the certification prior to awarding a contract to Moller.

---

[2]The protester has expressed concern as to the completeness of the award document in light of the report's presentation of the documents in separate attachments. Since the agency affirmatively confirms that the contract properly included all of the amended IFB terms, despite the administrative error in compiling the documents for the agency report, the protester's allegation of the agency's improper relaxation of the amendments' material requirements upon award is not supported by the record.

[3]The Moller bid also contained the full procurement integrity certification for contract modifications at FAR § 52.203-9, which was also signed by Ewing as the person responsible for contract modification proposals; the IFB requirement for this certification, however, was deleted by solicitation amendment. Since this acquisition was for commercially available services, the IFB did not contain the more comprehensive procurement integrity certificate of FAR § 52.203-8, which has been interpreted by our Office as imposing substantial additional legal obligations (such as additional reporting requirements and certifications) on a bidder that are not included in the current IFB's certificate.

The agency reports that the contracting officer did not question Ewing's signature on the procurement integrity certification. The agency points out that although Moller signed the bid, elsewhere in the bid (such as in the price certification and amendment documents), Ewing was presented as a supervisor/project manager employee responsible for the offer--Moller certified in the bid that Ewing was an authorized agent of the bidder as identified in the bidder's independent price determination certification. The agency also reports that subsequent to the filing of the protest issue, the Army confirmed with Moller that Ewing was authorized to complete the certification.

Our Office has recognized that separate individuals may sign the bid and the procurement integrity certification submitted with the bid so long as the certifier has the authority to bind the bidder to the terms of the certification. M.R. Dillard Constr., B-271518.2, June 28, 1996, 96-2 CPD ¶ 154, at 5. Our cases in this area generally hold that terms in the procurement integrity certificate at FAR § 52.203-8, not present in this IFB, impose substantial legal obligations upon a contractor and that where there is a failure to conclusively demonstrate that these additional terms are accepted by the contractor the bid is nonresponsive. Mid-East Contractors, Inc., 70 Comp. Gen. 383 (1991), 91-1 CPD ¶ 342 at 6. Those cases are materially distinguishable from the matter at hand, however, given the abbreviated procurement integrity certificate in the IFB which simply does not impose upon the contractor the same substantial legal obligations (such as requirements for further certifications and reports).

Moreover, the record shows that the Moller bid presented information demonstrating Ewing's substantial role in the bid preparation, as well as his certified authority and significant responsibility for the bid pricing. Thus, the bid reasonably demonstrated that the certifier, Ewing, was in a position to make a knowledgeable certification and that his signature bound himself and the bidder to the terms of the abbreviated certification.[4] See Victoria Inn Ltd.; Beige Plane, Ltd., B-256724; B-256724.2, July 21, 1994, 94-2 CPD ¶ 37, at 4.[5]

---

[4]The procurement integrity certification requirements were eliminatd by Pub. L. No. 104-106, § 4304, 110 Stat. 642, 659-665 (1996). However, the solicitation at issue here was issued prior to the effective implementation date of the amended provision which was only days after award here. Id. § 4401, 110 Stat. 678.

[5]The protester points out that James L. Moller did not complete the certification in the IFB for the provision of the names of those individuals authorized to sign the bid; however, we do not find this omission material in light of our discussion above since the bid elsewhere showed there was no reasonable question as to the authority of the certifier here.

The protester next contends that the Moller bid should be rejected as nonresponsive due to an alleged ambiguity regarding the identity of the bidder and awardee. The protester asserts that the contract file documents do not show that the bidder and awardee are the same legal entity. The record shows that the bid was submitted in the name of James L. Moller, but that the agency's responsibility determination (which considered Moller's experience on contracts performed by Moller Enterprises) and post-award documentation refer to Moller Enterprises. The agency reports that the bidder and awardee are the same and that--apparently because post-bid opening correspondence received from the awardee was written on Moller Enterprises letterhead with the same address as that on Moller's bid and such correspondence was signed by James L. Moller or James T. Ewing, the same individuals identified in the James L. Moller bid--the agency's contracting personnel mistakenly referred to the awardee as Moller Enterprises. The actual contract, however, clearly states that award was made to James L. Moller; the agency confirms that all other documents in its procurement file will be corrected to reflect the identity of the actual awardee (the bidder, James L. Moller) which was correctly identified on the governing contract award document.

The protester correctly states that an award to an entity other than that named in the bid would constitute an improper substitution of bidders requiring rejection of the bid as nonresponsive. National Found. Co., 72 Comp. Gen. 307, 309 (1993) 93-2 CPD ¶ 143, at 3. The protester's allegation here that there has been an improper substitution, however, is not supported by the record. The bid was submitted by James L. Moller, and the contract award, as issued, was made to the same entity, James L. Moller. Contrary to the protester's contentions, there simply is no showing that the bidder here potentially could avoid the obligation to perform the contract. In short, the agency's administrative errors in misidentifying the awardee on certain contract file documents and correspondence which do not accurately reflect the actual contract awardee, which errors will be corrected, provide no basis to question the identity and legal obligations of the awardee or the responsiveness of the bid. Id.

The protest is denied.

Comptroller General
of the United States