

DECISION

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

60123

FILE: B-184212

DATE: November 6, 1975

MATTER OF: M. M. Sundt Construction Company

97775

DIGEST:



LM107144

1. Information requested by Standard Form 19-B, Representations and Certifications, is needed to determine responsibility of bidder and is not needed for bid evaluation purposes, i.e., bid responsiveness. Therefore, failure of bidder to submit Standard Form 19-B with bid may be waived as minor informality.
2. Grants which require grantee to advertise contracts exceeding \$10,000 for competitive bidding will be reviewed to advise the cognizant Federal agency whether requirements for competitive bidding have been met.

M. M. Sundt Construction Company (Sundt) has objected to a possible award to R. E. Miller Paving and Construction, Inc. (Miller), under the Graham-Curtis Project, Phase II, Flood Detention Dams. The Graham Canal Company and the Curtis Canal Company (Graham-Curtis Canal Companies) are provided financial assistance in the form of grant and loan funds under the Small Reclamation Projects Act of 1956, as amended, 43 U.S.C. § 422a, et seq. (Supp. III, 1973), by the Bureau of Reclamation, United States Department of the Interior.

Seven bids were received with Miller submitting the low bid and Sundt the second low bid. Addendum No. 4 to the contract plans and specifications stated that Standard Form 19-B, entitled "Representations and Certifications," shall be executed and submitted with the bid. Included, as part of Standard Form 19-B, was a "Certification of Nonsegregated Facilities." Miller failed to submit a Standard Form 19-B with its bid but remedied the omission soon after bid opening. The main thrust of Sundt's complaint is that in its opinion the solicitation under paragraph 20 stated that failure to agree to the "Certificate of Nonsegregated Facilities" clause will render the bid nonresponsive. Accordingly, since Miller did not submit Standard Form 19-B with its bid, Sundt concludes that it must be found nonresponsive and that award should be made to Sundt.

While this case involves grant funds, this Office has decided that upon the request of prospective contractors it will review complaints concerning the propriety of contract awards by grantees in furtherance of grant purposes. 40 Fed. Reg. 42406 (1975). We have recognized that under contracts made by grantees of Federal funds, the Federal Government is not a party to the resulting contract. Even so, the cognizant Federal agency has the responsibility to determine whether there has been compliance with the applicable statutory requirements, agency regulations, and grant terms, including a requirement for competitive bidding. In such cases we have assumed jurisdiction in order to advise the agency whether the requirements for competitive bidding have been met. Thomas Construction Company, Incorporated, et al., B-183497, August 11, 1975, 55 Comp. Gen. _____, 75-2 CPD 101; 52 Comp. Gen. 874 (1973).

In the case of Illinois Equal Employment Opportunity regulations for public contracts, 54 Comp. Gen. 6 (1974), we made the following statement with respect to the applicability of basic principles of Federal procurement law to awards by grantees:

"It is clear that a grantee receiving Federal funds takes such funds subject to any statutory or regulatory restrictions which may be imposed by the Federal Government. 41 Comp. Gen. 134, 137 (1961); 42 id. 289, 293 (1962); 50 id. 470, 472 (1970), State of Indiana v. Ewing, 99 F. Supp. 734 (1951), case remanded, 195 F. 2d 556 (1952). Therefore, although the Federal Government is not a party to contracts awarded by its grantees, a grantee must comply with the conditions attached to the grant in awarding federally assisted contracts.

"We believe that, where open and competitive bidding or some similar requirement is required as a condition to receipt of a Federal grant, certain basic principles of Federal procurement law must be followed by the grantee in solicitations which it issues pursuant to the grant. 37 Comp. Gen. 251 (1957); 48 Comp. Gen., supra. In this regard, it is to be noted that

the rules and regulations of the vast majority of Federal departments and agencies specify generally that grantees shall award contracts using grant funds on the basis of open and competitive bidding. This is not to say that all of the intricacies and conditions of Federal procurement law are incorporated into a grant by virtue of this condition of open and competitive bidding. See B-168434, April 1, 1970; B-168215, September 15, 1970; B-173126, October 21, 1971; B-178582, July 27, 1973. However, we do believe that the grantee must comply with those principles of procurement law which go to the essence of the competitive bidding system. See 37 Comp. Gen., supra. * * *

From a review of the contracts between the Bureau of Reclamation and the Graham-Curtis Canal Companies, we believe the foregoing principles are applicable here. The determinative language is found in contract article 12(a) which states:

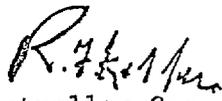
"The Contractor shall advertise each construction, equipment, or supply contract exceeding \$10,000 for competitive bidding. Upon receipt of bids, any action proposed by the Contractor other than making the award to the lowest responsible bidder shall be subject to review by the Contracting Officer."
(Emphasis supplied.)

This Office has held that the failure to complete one or another of the items on Standard Form 19-B does not render the bid nonresponsive and that the information may be submitted after bid opening. L. Reese & Sons, Inc., B-182050, November 11, 1974, 74-2 CPD 255. The basis for this view is that the information called for by Standard Form 19-B is necessary to determine the bidder's responsibility and is not necessary to decide whether the bid meets the requirements of the solicitation i.e., whether it is responsive. Therefore, the failure to submit Standard Form 19-B may be waived as a minor informality.

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We find no merit in Sundt's contention that Miller's bid is nonresponsive because of failure to agree to the Certificate of Nonsegregated Facilities clause. Under the language of paragraph 20, supplied by addendum No. 4, a bidder "* * * will be deemed to have signed and agreed to the provisions of the 'Certification of Nonsegregated Facilities' in this solicitation * * *" Thus, by signing its bid, Miller indicated its agreement that it will not segregate its facilities. We have recognized that a bidder can commit itself to affirmative action requirements in a manner other than that specified in the invitation. 51 Comp. Gen. 329 (1971); B-176260, August 2, 1972; B-177846, March 27, 1973. The commitment by Miller to comply with the certification was sufficiently evidenced by its acknowledgment of addendum No. 4 and the signing of the bid. See Bartley, Inc., 53 Comp. Gen. 451 (1974), 74-1 CPD; 51 Comp. Gen. 329 (1971). Further, the reasonable interpretation of the language in the "Certification of Nonsegregated Facilities" clause "* * * Failure of a bidder or offeror to agree to the Certification of Nonsegregated Facilities will render his bid or offer nonresponsive * * *" has reference to an ancillary statement or indication in the bid which raises a question of possible nonagreement notwithstanding the bid signature. However, this is not the case here. Leasco Information Products, Inc., et al., 53 Comp. Gen. 932 (1974), 74-1 CPD 314.

For the above-stated reasons, we believe the time of Miller's submission of Standard Form 19-B is a matter of form rather than substance and is not controlling in determining the responsiveness of its bid. Accordingly, we concur with the Bureau of Reclamation and the Graham-Curtis Canal Companies that the Miller bid should not be rejected because Standard Form 19-B was not submitted with the bid.


Acting Comptroller General
of the United States