



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Beta Construction Company

File: B-274511

Date: December 13, 1996

Leonard A. Sacks, Esq., Leonard A. Sacks & Associates, for the protester.
Robert J. McCall, Esq., General Services Administration, for the agency.
John Van Schaik, Esq., and Michael R. Golden, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Awardee's failure to submit with bid information requested by invitation for bids does not require rejection of bid where requested information related to the experience and qualifications of the bidder and roofing materials manufacturer and therefore could be submitted after bid opening since it involved a matter of bidder responsibility rather than bid responsiveness.

DECISION

Beta Construction Company protests the award of a contract to National Roofing Company under invitation for bids (IFB) No. GS-03P-96-CDC-0017, issued by the General Services Administration for replacing a roof and related work on the Social Security Administration's National Computer Center. Beta argues that the bid submitted by National was nonresponsive and should have been rejected.

We deny the protest.

Ten bids were submitted in response to the IFB. The low bid was rejected. National's bid was the next low. Although National had failed to submit certain information with its bid, when requested to do so after bid opening, the firm submitted that information. The contracting officer concluded that the information related to the firm's qualifications and experience--matters of responsibility--and determined National to be responsible.

Beta argues that National's bid should have been rejected as nonresponsive because it was not accompanied by information concerning the type of roof to be supplied, the manufacturer of the roof and warranties. Beta argues that the information related to responsiveness because the IFB required the information to be submitted with the bid and because without that information the agency could not determine

from the bid whether National had offered to meet the requirements of the solicitation.

In general, solicitation requirements for information relating to a bidder's capability and experience pertain to the bidder's responsibility, while those concerned with the product to be furnished involve bid responsiveness. IFR, Inc., B-203391.4, Apr. 1, 1982, 82-1 CPD ¶ 292. Notwithstanding solicitation language to the contrary, information bearing on a bidder's responsibility may be furnished after bid opening. Aviation Specialists, Inc.; Aviation Enters., Inc., B-218597; B-218597.2, Aug. 15, 1985, 85-2 CPD ¶ 174; Tutor-Saliba Corp., Perini Corp., Buckley & Co., Inc., and O & G Indus., Inc., A Joint Venture, B-255756, Mar. 29, 1994, 94-1 CPD ¶ 223.

Most of the informational requirements of the IFB were set forth in a section titled "Bidder Qualification Form." That section stated: "All bidders shall have the specified experience with the specified membranes and ability to obtain required warranties as follows." After that statement, the IFB described a 15-year manufacturer's warranty on the roofing membrane and a 2-year contractor warranty covering needed repair and/or replacement because of defective materials and workmanship.

Following the warranty requirements, the IFB stated:

"CONTRACTORS SHALL SUBMIT THE FOLLOWING INFORMATION WITH THEIR BID DOCUMENTS. FAILURE TO DO SO MAY RESULT IN REJECTION OF YOUR BID."

After that statement, under the heading "Manufacturer Qualifications," the IFB included the following:

"Manufacturer of roofing membrane: A company with not less than five (5) years of successful experience in manufacturing and producing materials of the type(s) specified in the project is required. Contractor shall provide appropriate literature, from the manufacturer, detailing the first year of application of specified membrane in the United States and a list of completed projects."

This requirement essentially was restated under the heading "CONTRACTOR QUALIFICATIONS," in the "Summary of the Work" section of the IFB which set forth the performance requirements for the contract.

The "Bidder Qualification Form," under the heading "**Roofing Applicator Qualifications**," also stated:

"Acceptable Roofing Applicator: Contractor shall be approved by the roofing materials manufacturer with a minimum of two (2) years experience installing the specified product. The Contractor shall submit written evidence, from the membrane manufacturer that he has been an Approved Applicator for two (2) years and that he is eligible to provide the guarantee. A copy of the guarantee proposal, certified by the manufacturer shall be submitted with the bid documents."

This requirement essentially was restated in the "Summary of the Work" section of the IFB under the heading "CONTRACTOR QUALIFICATIONS." Related to this requirement, the "Summary of the Work" section also stated under the heading "CONTRACTOR QUALIFICATIONS":

"Bidders shall provide a list of completed projects using the type of membrane specified or an approved equal. If the Bidder does not have documented experience installing the specified system, the membrane manufacturer shall be required to assign a factory trained technical representative to supervise the work. . . . The bidder shall provide a signed and notarized statement from the manufacturer that this service will be provided if the above list of projects is not available."

Finally, the "Bidder Qualification Form" section of the IFB included the following provision:

"Pursuant to and in accordance with specifications, the following items are to be submitted regarding the products to be used on the Project:

"Item 1. **ROOF MEMBRANE MANUFACTURER**

"Item 2. **INSULATION MANUFACTURER**

"Item 3. **APPROVED APPLICATOR
QUALIFICATION STATEMENT FROM
THE ROOFING MEMBRANE MANUFACTURER**

"Item 4. **COPY OF MEMBRANE
MANUFACTURER'S WARRANTY"**

We conclude that the lack of information required by these provisions was not a matter of responsiveness. The warranty provisions call for bidders to have the ability to obtain a 15-year manufacturer's warranty. The ability to comply with

solicitation requirements, including warranty requirements, is a matter of responsibility. IFR, Inc., supra. The other provisions seek only information concerning the bidder's and manufacturer's experience and qualifications and therefore they too relate only to responsibility.

While one IFB provision--the "**Manufacturer of roofing membrane**" clause--does refer to the membrane to be used in the project, the information sought by the provision clearly relates to the manufacturer's experience. The clause requires that the manufacturer of the roofing membrane have 5 years of successful experience manufacturing the type of membrane specified and asks for a list of completed projects and the first year of membrane application. It imposes no performance requirement applicable to the membrane (such as a minimum number of prior successful applications), and therefore imposes no requirement that can be properly viewed as a matter of responsiveness. See generally W.M. Schlosser Co., Inc., B-258284, Dec. 12, 1994, 94-2 CPD ¶ 234.

Finally, Beta argues that if National's bid is not rejected as nonresponsive, National, by not submitting the requested information with its bid, had "two bites at the apple," in other words, the option to elect after bid opening--and after the exposure of prices--whether or not to accept the contract by choosing to furnish or not furnish the requested information.

The "two bites at the apple" concept refers to a situation in which a bidder, after bid opening, has an opportunity to make its bid either responsive or nonresponsive. Veterans Admin. re Welch Constr., Inc., B-183173, Mar. 11, 1975, 75-1 CPD ¶ 146. Here, however, National's bid was responsive on its face, and there was nothing National could do to make the bid nonresponsive. While National, after bid opening, could have declined to provide the required information so as to bring about a determination that the firm was nonresponsive, that possibility is always present when a firm's eligibility or responsibility is in question. 49 Comp. Gen. 553 (1970); Hendry Corp., B-195197, Mar. 31, 1980, 80-1 CPD ¶ 236. That possibility does not convert a matter of responsibility into an issue of responsiveness.

The protest is denied.

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