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DECISION



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

FILE: B-186748

DATE: October 28, 1976

MATTER OF: G & C Enterprises, Inc.

DIGEST:

1. Bid submitted in second step of two-step procurement by a Joint Venture consisting of one firm which had submitted acceptable proposal under step one and other firm which did not participate in step one may be considered for award. Prior decision holding that award may not be made to Joint Venture where bid was submitted by only one member of Joint Venture is not applicable to step one of two-step procurement since change in identity of bidder is not involved.
2. Where amount of bid bond was in excess of the difference between low bidder's bid and the next low acceptable bid, failure to provide bond in amount provided in solicitation could be waived pursuant to ASPR # 10-102.5(ii).

This is a protest by G & C Enterprises, Inc., concerning the award of a contract to the Joint Venture of A. Neri, Inc. and Craft Electric Corporation (Craft) under invitation for bids (IFB) 28609-76-09037, issued by the McGuire Air Force Base, New Jersey, for an Energy Monitor and Control System.

The procurement was conducted pursuant to two-step formal advertising. This procedure contemplated the submission of technical proposals during the first step, followed by the submission of bids from those firms which submitted acceptable technical proposals. Five firms, including both the protester and Craft, submitted acceptable technical proposals during the first step of the procurement. In response to the second step, however, the low bid was submitted by a Joint Venture consisting of A. Neri, Inc., which had not previously participated in the procurement, and Craft.

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The protester asserts that award of the contract to the Joint Venture would be contrary to the restriction limiting award to those firms which had submitted acceptable technical proposals under the first step of the procurement and were "prequalified" and approved under step one. In this connection, section 2-501(ii) of the Armed Services Procurement Regulation (ASPR) provides that the second step of a two-step procurement is "confined to those who submitted acceptable technical proposals in step one." Furthermore, ASPR § 2-503.2(ii) requires that the IFB include the following provision:

"Bids will be accepted and considered only from those firms who have submitted acceptable technical proposals pursuant to the first step of such procedures, as initiated by the [Request for Technical Proposals]."

It is first necessary to determine whether the agency's consideration of the Joint Venture's bid violated the above-quoted provisions of the ASPR, as interpreted in light of the purpose of the two-step procurement process. The purpose of step one of a two-step procurement is to permit the Government to determine the acceptability of the technical proposal described by each potential bidder. We have likened the two-step procedure to the use of a qualified products list which restricts consideration of bids to only those which offer a product which has been previously qualified by the Government. 40 Comp. Gen. 35, 38 (1960). The purpose of step two is to solicit firm bids by formal advertising only from those firms which have submitted acceptable technical proposals during the first step.

In the present case, Craft, one of the firms which had submitted an acceptable technical proposal during step one of the procurement joined with A. Neri, Inc. in a Joint Venture, prior to its submission of a bid in the second step of the procurement.

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As a general rule, members of a Joint Venture are jointly and severally liable for the obligations of the Joint Venture. See Wood v. Western Beef Factory, Inc., 378 F. 2d 96 (10th Cir. 1967); Cf. 52 Comp. Gen. 223, 225 (1972). Thus Craft, a member of the Joint Venture, as evidenced by the signature of its officer, on the bid, was as fully obligated to perform a contract resulting from the acceptance of the bid as it would have been had it submitted a bid only in its own behalf. Since the bid submitted in the second step of the procurement bound the firm to the acceptable technical proposal in the first step, the agency's essential objective in restricting acceptable bids to those submitted by a firm which had submitted an acceptable technical proposal was satisfied.

It should also be noted that this Office has held that an award may not be made to a Joint Venture where the bid was submitted by one of the firms constituting the Joint Venture. See B-144012, November 7, 1960. That is, a bidder may not unilaterally change its identity after bid opening. However, in the present case, the acceptance by the Government of Craft's technical proposal created no legal obligation upon Craft to bid in step two. The addition of another firm as a principal in Craft's bid for the second step, did not give Craft an opportunity to control its eligibility for award after bid opening to the prejudice of other bidders because the party awarded the contract and the party submitting the bid would be the same, the change having occurred prior to submission of the bid. Consequently, the bid submitted by the Craft-Neri Joint Venture was properly considered for award.

The protester also asserts that the Joint Venture's bid should not be considered for award since it was accompanied by an insufficient bid bond. The bid bond of \$100,000, submitted by the Joint Venture was \$9,600 less than the \$109,600 required by the solicitation.

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Section 10-102,5(ii) of the ASPR provides that:

"Noncompliance With Bid Guarantee Requirements.

When a solicitation requires that bids be supported by a bid guarantee, noncompliance with such requirement will require rejection of the bid * * * except that rejection of the bid is not required in these situations:

* * * * *

"(ii) when the amount of the bid guarantee submitted, though less than the amount required by the invitation for bids, is equal to or greater than the difference between the price stated in the bid and the price stated in the next higher acceptable bid * * *."

The protester argues that even though the bid bond in question exceeds the \$17,000 difference between the two lowest acceptable bids, it should be rejected because it was \$9,600 less than the amount required by the solicitation and that this amount may not be considered minor when measured against the solicitation requirement. In support of this position, the protester cites our decision in Capital Coatings, B-186608, June 28, 1976, 76-1 CPD 416. However, in that case, unlike the instant one, the difference between the two low acceptable bids was well in excess of the bond in question.

In the present case, the bid bond submitted by the Joint Venture exceeded the difference between the Joint Venture's bid and the next low bid. Since the Joint Venture's failure to conform to the literal requirements of the bid bond provisions comes within the ASPR exception, the agency properly waived the deficiency in the Joint Venture's bid bond. See Commercial Sanitation Service, 55 Comp. Gen. 352 (1975).

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States