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T. Wagner
Prior It

DECISION

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

FILE: B-187631 DATE: January 24, 1977

MATTER OF: Thomason Industries Corporation

DIGEST:

Bid which fails to indicate whether portion of required work will be performed by bidder or by subcontractor as required by IFB subcontractor listing provisions is nonresponsive.

Thomason Industries Corporation protests the rejection of its bid submitted in response to invitation for bids No. GS-01B-01582, issued by the General Services Administration (GSA). The contracting officer determined that Thomason's bid was nonresponsive to the solicitation because it did not include a required certification concerning the firm's equal employment opportunity affirmative action program. Subsequently, GSA reported that Thomason's bid was also nonresponsive because it did not contain a properly completed subcontractor listing. Thomason argues that its bid did contain an affirmative action certification when submitted and that its subcontractor listing was properly completed.

The solicitation covered the installation of exterior and interior stone, masonry and plaster finishes in the Federal Building, New Haven, Connecticut, and included the following requirement for subcontractor listing:

> "21.1 For each category on the List of Subcontractors which is included as part of the bid form, the bidder shall submit the name and address of the individual or firm with whom he proposed to contract for performance of such category, Provided, that the bidder may enter his own name for any category which he will perform with personnel carried on his own payroll (other than operators of leased equipment) to indicate that the category will not be performed by subcontract.
>
> "21.2 If the bidder intends to subcontract with more than one subcontractor for a category or to perform a portion of a category with his own personnel and subcontract with one or more subcontractors for the balance of the category, the bidder shall list all such individuals or firms (including himself) and state the portion (by percentage or narrative description) of the category to be furnished by each."

The supplement to the bid form which was provided for the listing of subcontractors stated:

> "* * * any categories * * * where a fabricator is to be used, the fabricator must be listed in addition to the erector."

For the one category (exterior stone) listed on the bid form Thomason identified two suppliers of stone but failed to specify whether the balance of the work comprising that category (erection) would be performed by a subcontractor or by Thomason itself. GSA, relying on our decisions in 46 Comp. Gen. 156 (1966) and 50 Comp. Gen. 839 (1971), believes this failure renders Thomason's bid nonresponsive.

We agree that the bid is nonresponsive. Although Thomason argues that it intended to perform the erection work and that it was not mandatory for it to list itself as the entity which would perform work not to be subcontracted, we think it is clear that the solicitation provisions quoted above do so require, and we have held in similar situations that a bidder's failure to list itself on a required subcontractor listing when it intended to perform a portion of the required work necessitated rejection of the bid. For example, in 50 Comp. Gen. 839, supra, we said:

> "We agree that the failure of * * * [the bidder] to list itself as intended performer of part of the work covered by the first two subcontractor listing categories is sufficient to render that bid nonresponsive in view of the explicit direction in [the solicitation] * * * that such listing be included * * *. This conclusion is in accord with the position taken by our Office since our decision in 43 Comp. Gen. 206 (1963) that subcontractor listing requirements should be considered material invitation requirements in order to control the undesirable practice by prime contractors of bid shopping * * * and that strict compliance with subcontractor listing requirements is necessary * * *." 50 Comp. Gen. at 842.

See also, B-175172, September 28, 1972. As we are aware of no material difference between the instant case and the two

cited cases with respect the subcontractor listing requirement, we must view Thomason's bid as nonresponsive.

Since Thomason's bid therefore could not properly be accepted, we need not review GSA's determination that the bid was also nonresponsive for failure to include an affirmative action certification.

The protest is denied.

R. F. Keller

Deputy Comptroller General
of the United States