

5370

M.A. Hordell

PL 1

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20546

FILE: B-170439

DATE: February 15, 1978

MATTER OF: John Grace & Co., Inc.

DIGEST:

Where formally advertised solicitation contains subcontractor listing requirement, low bid which listed alternate subcontractors and single percentage for each work category under "Portion of Category" column was nonresponsive as it afforded bidder opportunity to select which of two or three firms listed would be subcontractor contrary to requirement to preclude bid chopping.

John Grace & Co., Inc. (Grace), through counsel, protests the rejection of its bid under invitation for bids (IFB) No. NNY-75501-75810 as nonresponsive to the subcontractor listing requirement. The IFB was issued by the General Services Administration (GSA) for heating and ventilating work at the Federal Correctional Institution for Adults, Otisville, New York. Notwithstanding this protest, a contract has been awarded to M. Kramer & Sons, Inc. (Kramer), since GSA, in accordance with Federal Procurement Regulations § 1-2.407-8(b)(4) (1964 ed. amend. 68), determined that a prompt award would be advantageous to the Government.

The IFB required that the bidder submit as a part of its bid a "list of subcontractors" specifying the firms with whom the bidder would subcontract for each of the designated categories of work. The subcontractor listing requirements are contained in paragraph 21 of the Special Conditions of the IFB, which provides in pertinent part as follows:

B-190439

"21. LISTING OF SUBCONTRACTORS

"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.

* * * * *

"21.14 If the bidder fails to comply with the requirements of subparagraphs (21.1) or (21.2) of this clause, the bid will be rejected as non-responsive to the invitation."

Grace's bid included the following list of proposed subcontractors:

B-190439

*Category Section No. and Title	Subcontractor Names and Business Addresses	Portion of Category (as applicable)
CONTROLS	Honeywell, Inc. Robertshaw Controls or T. S. Brown	10%
INSULATION AND PIPE COVERING	Johns-Manville American Wyckoff Insulation	20%
SHEET METAL	Elmsford Triple S Hicksville Metal Prods., Inc.	35%
CHEMICAL CLEANING AND TREATMENT	Heating Economy Services Metropolitan Refining Gotham Refining	2%
TESTING AND BALANCING	Systems Testing & Balancing Balancing Brennan Co.	2%

It is GSA's contention that the listing of two or more subcontractors under each category was contrary to paragraph 21.1, supra, which required that a single firm be named for each category, except as provided in paragraph 21.2, supra. Further, GSA argues that the designation of those subcontractors without listing the portion of work each would be performing individually was contrary to paragraph 21.2, supra. The acceptance of Grace's bid, GSA alleges, would present to Grace the opportunity to engage in bid shopping.

E-190439

Grace's position is that it "listed the subcontractors it intended to use and the percentages to be awarded." Moreover, Grace argues that it "delineated the amount of work to be subcontracted" and since the bid was based on mechanical work and Grace is a mechanical contractor, it is obvious that Grace intended to do the remaining work. In addition, Grace contends that due solely to space limitations it was precluded from including the addresses of the proposed subcontractors. Our Office has been advised by Grace that all of the firms listed are registered to do business in New York. Also, Grace has advised us that it selected more than one control firm since it was its intention to split the contract.

"Bid shopping" is the seeking after award by a prime contractor of lower price subcontractors than those originally considered in the formulation of its bid. James and Stritzke Construction Company, 54 Comp. Gen. 159, 160 (1974), 74-2 CPD 128. The subcontractor listing requirement, 41 C.F.R. § 5B-2.202-70 (1976), is intended to preclude "bid shopping" and its attendant undesirable effects and to require of bidders an agreement not to have any of the listed categories of work performed by firms other than those listed and is, therefore, a material requirement pertaining to bid responsiveness. James and Stritzke Construction Company, supra; 50 Comp. Gen. 839 (1971); 43 Comp. Gen. 206 (1963).

We have held on numerous occasions that the test to be applied in determining the responsiveness of a bid is whether the bid as submitted is an offer to perform, without exception, the exact thing called for in the invitation, and upon acceptance will bind the contractor to perform in accordance with all the terms and conditions thereof. 49 Comp. Gen. 553, 556 (1970). When applying the test, the determining factor is not whether the bidder intends to be bound but whether this intention is apparent from the bid as submitted. 42 Comp. Gen. 502 (1963).

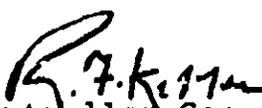
B-190439

The listing, by Grace, of two or three subcontractors under each category of work is clearly ambiguous and contrary to paragraph 21.1, supra. Moreover, this condition, rather than being cured, is compounded by the entry of a single percentage for each work category in the "Portion of Category" column. This is contrary to paragraph 21.2, supra, which requires that the portion of work to be performed by each firm or individual, whether a subcontractor or the bidder himself, be set forth in either percentage or narrative form. See Thomason Industries Corporation, B-187631, January 24, 1977, 77-1 CPD 49.

Based on the foregoing, it is our view that Grace's bid is nonresponsive for failing to meet the subcontractor listing requirement. See James and Stritzke Construction Company, supra, where the bidder listed subcontractors in the alternative and the bid was found to be nonresponsive. In that situation, as here, the bidder, contrary to the terms of the IFB, could select after bid opening the firm with which it would subcontract and could engage in the practice of bid shopping. With regard to the other issues raised, our conclusion renders them academic and they, therefore, will not be discussed.

Accordingly, the protest is denied.

Deputy


Comptroller General
of the United States