

Graham

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DECISION



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

FILE: B-201849

DATE: May 19, 1981

MATTER OF: RGK, Inc.

DLG06676

DIGEST:

Where sum of prices of items designated by bidder to be subcontracted to Minority Business Enterprise (MBE) firms is less than required goal adopted in executed "Minority Business Goal Assurance" form and compliant dollar volume of work stated by bidder to be let to MBE firms, bid is nonresponsive as ambiguous bid and cannot be corrected to make it responsive.

RGK, Inc. (RGK), filed a complaint against the rejection of its low bid for North Carolina Federal-aid Project Number F-36-1(22) by the North Carolina Department of Transportation (NCDOT), the recipient of a Federal Highway Administration (FHWA) grant for 75 percent of the cost of certain highway grading, drainage, paving and structures.

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Essentially, RGK claims that the decision by NCDOT, concurred in by FHWA, to reject RGK's bid as nonresponsive for failure to comply with the Minority Business Enterprise (MBE) requirements of the solicitation was improper, because RGK had indicated in its bid that a sufficient dollar volume of its total bid price would be subcontracted to MBE's. We conclude that RGK's bid was properly rejected as nonresponsive, since the amount indicated in the bid to be subcontracted to MBE's was ambiguous.

The solicitation established a goal that at least 4 percent of the total dollar volume of the contract should be subcontracted to MBE's. The solicitation required each bidder as a condition of responsiveness to submit information indicating a sufficient dollar volume of work to be subcontracted to MBE's. A form was provided for furnishing the information. The solicitation also required each bidder to execute a

[Protest Involving
Bid REJECTION]

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"Minority Business Enterprise Goal Assurance" form stating that it would meet the minority business goals.

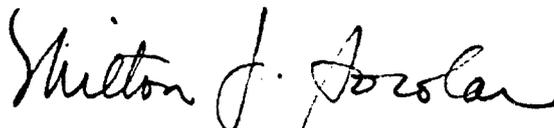
RGK executed the "Minority Business Enterprise Goal Assurance" form and completed the form calling for information as to the volume of work to be let to MBE's. Both forms were submitted with the RGK bid. The latter form stated a total dollar volume of work amount to be subcontracted to MBE's equaling 4.054 percent of the total dollar volume of contract work, the minority subcontractors that would perform the work and the items of work to be performed by them. Upon checking the prices in the RGK bid for the items that RGK designated for MBE performance, NCDOT found that the actual sum of the prices for the items was less than RGK indicated in the form and was only 3.73 percent of the total dollar volume of the contract work. When NCDOT subsequently made inquiry of RGK about this discrepancy, RGK responded that in the supporting information it had failed to indicate part of one of the work items as being for subcontract to an MBE and that the total volume of work to be subcontracted to MBE's in the form was correct. RGK supplied copies of its MBE worksheet to show its error in the supporting information. NCDOT rejected RGK's bid as nonresponsive relying upon a North Carolina Attorney General's opinion on this matter and the concurrence of FHWA.

RGK, relying upon Paul N. Howard Company, B-199145, November 28, 1980, 80-2 CPD 399, contends that the bid should not have been rejected as nonresponsive because it indicated in the forms accompanying the bid that it would perform more than 4 percent of the total dollar volume of the work with MBE firms and the supporting information indicating which work items were to be subcontracted to MBE's could have been changed as a matter of responsibility notwithstanding that the solicitation required the information as a condition of responsiveness. However, in B-176260, August 2, 1972, affirmed October 4, 1972, where a bidder submitted with its bid both a "Bidder's Agreement" form, which stated that the bidder will comply with the minority group employment goals, and information setting out a goal which did not meet the requirements of the solicitation's minority employment program, we held that the bid was nonresponsive as an ambiguous

bid as to the bidder's commitment to meet the goals and could not be corrected to make the bid responsive. See also Astro Pak Corporation/Diversified Chemical Corporation, B-183556, August 8, 1975, 75-2 CPD 97. Likewise, the RGK bid is ambiguous in that the sum of the prices of the items designated for MBE firms is less than the goal adopted in the "Minority Business Enterprise Goal Assurance" form and the compliant dollar volume of the work stated by RGK to be let to MBE firms. Therefore, NCDOT properly rejected RGK's bid as nonresponsive.

This case is to be distinguished from the Howard case where the bidder did not set out any different goals than that required by the solicitation. There, the bidder listed as a participating MBE subcontractor a firm which upon a fact-finding review outside the bid was determined not to be an MBE. We indicated that the information pertained to responsibility and could have been changed after bid opening. In that regard, "responsibility" refers to the proposed contractor's ability or capacity to perform the contract requirements, whereas "responsiveness" refers to whether the bidder has unequivocally offered to perform in total conformance with the terms of the solicitation. J. Baranello and Sons, 58 Comp. Gen. 509 (1979), 79-1 CPD 322.

Accordingly, the RGK complaint is denied.



Acting Comptroller General
of the United States