



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Genesis General Contracting, Inc.
File: B-225794
Date: June 1, 1987

DIGEST

Bid for replacement of roof was properly rejected as nonresponsive where bidder took exception to solicitation's requirement for a manufacturer's labor and materials 10-year roofing guarantee by submitting statement from manufacturer disclaiming responsibility for defects attributable to defective workmanship during installation.

DECISION

Genesis General Contracting, Inc., protests the Air Force's rejection of its bid as nonresponsive under invitation for bids (IFB) No. F28609-87-B-0002, for the replacement of the roof of the base supply building at McGuire Air Force Base. The protester's bid was rejected for failing to meet a warranty requirement. We deny the protest.

The IFB was issued on December 1, 1986. The IFB, as originally issued, contained a requirement for a 5-year warranty covering defects and leaks in the roof system. Amendment 2 deleted this requirement and substituted a requirement that with its bid package each bidder furnish a statement from the manufacturer of the roofing system which the bidder intended to install certifying that the bidder was an authorized and approved applicator of the system to whom the manufacturer would issue a "Ten Year Term Roofing Guarantee." A certification form was provided with amendment 2 for this purpose. The amendment required that prior to final acceptance, the contractor submit the actual ". . . BURS [Built-up roofing system] manufacturer's labor and materials Ten Year Term Roofing Guarantee." Manufacturers were instructed to attach a sample of their guarantee to the certification.

Bids were opened on January 28, 1987. Genesis submitted the lowest of the 12 bids received. With its bid, Genesis enclosed the unrevised form, rather than the form provided with the amendment, in which Celotex Corporation, the

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roofing manufacturer, certified only that Genesis was an authorized and approved applicator of its roofing system. Celotex failed to certify that Genesis was an applicator to whom it would issue its 10-year guarantee and did not attach a sample of its guarantee. In addition, Celotex affixed the following disclaimer to its certification:

"Celotex acts only as the seller of materials and has no control of the application of materials-or the conditions under which they are applied-whether they are applied by a Celotex Approved Roofing Contractor or by another roofing contractor. Celotex assumes no responsibility for the performance of the roof beyond the obligation to manufacture and ship quality materials which are suitable for the purpose intended."

The contracting officer rejected Genesis' bid as nonresponsive because Genesis had failed to furnish evidence of a commitment from Celotex to provide a 10-year roofing guarantee.

Genesis asserts that since Genesis was designated Celotex's authorized applicator, it automatically was "a beneficiary of . . . [the] warranty." It argues that by acknowledging amendment 2, it was obligated to provide the 10-year warranty. Finally, Genesis claims that, in any event, its alleged failure to offer the warranty is waivable as a minor informality. We disagree with these contentions.

In our view, the contracting officer correctly rejected Genesis' bid as nonresponsive since Genesis not only failed to provide evidence that it could furnish the required warranty, but also took exception to the terms of the warranty. To be responsive, a bid must clearly evidence on its face the bidder's intention to comply with, and be bound by, the terms and conditions of the IFB. California Mobile Communications, B-223137, Aug. 20, 1986, 86-2 CPD ¶ 203. For this reason, a bidder's exception to or qualification of an IFB's warranty requirements renders its bid nonresponsive and the defect cannot be waived as a minor informality. Id.; see also, West Alabama Remodeling, Inc., B-220574, Dec. 26, 1985, 85-2 CPD ¶ 718.

The revised IFB required that the manufacturer certify that the contractor designated to perform the roof work, in this case Genesis, would be issued the 10-year warranty for labor and materials without exception. Here, Celotex's statement disclaimed responsibility for defects caused by improper workmanship on the part of Genesis and clearly states that

Celotex does not intend to provide the required manufacturer's labor and materials 10-year guarantee for Genesis or any other applicator's work. Genesis' bid was therefore properly rejected as nonresponsive.

The protest is denied.

for Seymour E. Os
Harry R. Van Cleve
General Counsel