



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Scherr Construction Company, Inc.

File: B-234778

Date: May 25, 1989

DIGEST

1. Bid is responsive despite bidder's failure to submit with bid evidence of subcontractor's previous asbestos abatement experience since information concerning firm's experience bears on responsibility and, as such, may be furnished any time prior to award.
2. Bid complies with solicitation requirement for liability insurance in connection with asbestos removal work and thus is responsive where bidder indicates that it will furnish liability insurance through its asbestos subcontractor.

DECISION

Scherr Construction Company, Inc., protests the proposed award of a contract to Henry H. Hackett & Sons, the low bidder, under invitation for bids (IFB) No. BIA-0150-89-1, issued by the Bureau of Indian Affairs (BIA) for construction of a new kitchen and/or dining facility at the Pierre Learning Center in Pierre, South Dakota. Scherr, the second low bidder, contends that Hackett's bid should have been rejected as nonresponsive.

The IFB called for special work under the contract, including asbestos removal and disposal. In this regard, the IFB required each bidder to furnish an Asbestos Contractor's Qualification Statement (ACQS) with its bid, consisting of 16 questions to be completed along with supporting documentation by the contractor or subcontractor responsible for the asbestos work relating to its previous asbestos removal experience and asbestos abatement liability insurance. Hackett submitted an incomplete ACQS, stating only that its asbestos subcontractor would be identified later and that the subcontractor would provide the liability insurance required by the IFB. Although the IFB provided that the failure to furnish sufficient information or omission of any information specifically requested in the

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ACQS would be cause for disregarding the bid, the contracting officer did not reject Hackett's bid based on the incomplete ACQS.

Scherr first argues that Hackett's bid is nonresponsive based on Hackett's failure to demonstrate in the ACQS it submitted with its bid that either Hackett or its proposed subcontractor have previous asbestos removal experience of 3 years as required by the IFB. BIA disagrees, arguing that the issue of whether or not the evidence required in the ACQS has been furnished is a matter of responsibility that may be resolved any time prior to award, rather than, as Scherr argues, a question of responsiveness which must be determined from a facial examination of the bid package at bid opening. We agree.

The purpose of the 3-year experience requirement relates to whether the firm responsible for the asbestos removal has the requisite experience and expertise necessary under this special aspect of the contract. This is an issue of responsibility rather than bid responsiveness. BBC Brown Boveri, Inc., B-227903, Sept. 28, 1987, 87-2 CPD ¶ 309. This is so regardless of solicitation language requiring submission of information concerning experience with the bid, because a contracting agency cannot convert a matter of responsibility into one of responsiveness. Watch Security, Inc., B-209149, Oct. 20, 1982, 82-2 CPD ¶ 353. Therefore, BIA was free to accept this information bearing on responsibility after bid opening. See Gaffny Plumbing and Heating Corp., B-206006, June 2, 1982, 82-1 CPD ¶ 521.

The protester also contends that the low bid is nonresponsive on the basis that the low bidder's statement in the ACQS that the "subcontractor will provide insurance as per specifications" evidences the low bidder's unwillingness to agree unequivocally to the insurance requirement. In this regard, the IFB required evidence of asbestos abatement liability insurance at least in the amount of \$500,000. We find this argument to be without merit.

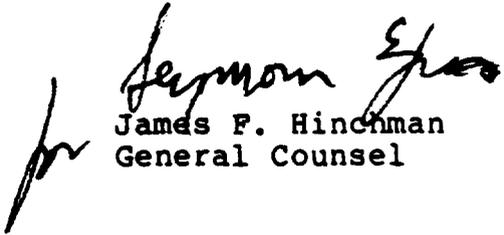
Section 02080, paragraph 1.02 of the technical specifications in the IFB describes the asbestos removal work as including all labor, materials, services and insurance required to carry out the work in accordance with applicable regulations. With regard to insurance, the ACQS contained the following question:

"Do you or your asbestos subcontractor currently have liability insurance specifically for asbestos abatement work? Yes ____; No ____; If yes, liability amount? _____."

In view of the language in the ACQS, it is clear that BIA recognized the probability that a general contractor would perform the major work under the contract and an asbestos subcontractor would perform the asbestos work under the contract, since the ACQS was drafted to ascertain whether either the contractor or its asbestos subcontractor had liability insurance which covered asbestos abatement work. Consequently, Hackett's statement that its subcontractor would provide the required insurance in no way takes exception to the insurance requirement in the IFB because it indicates Hackett's agreement to furnish liability insurance as well as asbestos work through its use of a subcontractor. Moreover, Hackett's failure to submit evidence of insurance coverage at bid opening does not render its bid nonresponsive because it concerns the subcontractor's ability to perform the contract in accordance with its terms and thus is a matter of the firm's responsibility which must be determined in the affirmative by the contracting officer prior to award. See International Alliance of Sports Officials, B-211831, Mar. 6, 1984, 84-1 CPD ¶ 271.

Scherr also maintains that it was treated unfairly with regard to the ACQS requirement because a contracting official, in response to a question from Scherr before bid opening, emphasized that a completed ACQS had to be submitted at bid opening in order for the bid to be responsive and as a result Scherr expended effort in completing its ACQS which was not required of Hackett. Scherr's argument provides no basis to require rejection of Hackett's bid since, as discussed above, a contracting agency cannot convert a matter of responsibility into one of responsiveness. Finally, to the extent that Scherr argues that the ACQS contains definitive responsibility criteria which Hackett or its subcontractor do not meet, the issue is premature since the BIA has not yet made a responsibility determination regarding Hackett.

The protest is denied.


James F. Hinchman
General Counsel