

Timmerman



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Syllor, Inc./Ease Chemical

File: B-236161, B-236250

Date: November 17, 1989

DIGEST

Protests are sustained where agency rejection of protester's bids as nonresponsive due to uncertainty as to the bidder's identity was based only on minor discrepancies in the bids which did not call in to question the identity of the actual bidder.

DECISION

Syllor, Inc./Ease Chemical, a joint venture of Syllor, Inc., and Ease Chemical, protests the rejection of its bids under invitation for bids (IFB) Nos. DLA400-89-B-0100 (IFB-0100) and DLA400-89-B-3104 (IFB-3104) both issued by the Defense Logistics Agency.

We sustain the protests.

On March 6, 1989, the agency issued IFB-0100 for various types and quantities of hydraulic fluids and lubricating oils. The solicitation provided for multiple awards and contained 238 separate line items. Seven bidders responded by the April 20 opening date. The protester was the low bidder for 22 of the line items.

IFB-3104 was issued on May 17 for various quantities of Trichloroethane. This solicitation also provided for multiple awards and contained three line items. Bid opening was June 16 and seven firms responded. The protester was the low bidder for all three items.1/

1/ Syllor/Ease submitted the third low bid on all three line items. However, the solicitation provided for the application of a 10 percent evaluation preference for small disadvantaged businesses. After application of this preference the bid submitted by Syllor/Ease became the low bid for all three items.

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The contracting officer for both solicitations determined that the protester's bids were ambiguous concerning the bidder's legal status and identity and rejected the bids as nonresponsive. Award was made under IFB-0100 for 13 of the 22 line items and for all line items under IFB-3104. Contract performance has been suspended under all the awarded items.

The agency states that it rejected the protester's bids because in both bids Syllor/Ease identified itself as a joint venture while the bids were signed by an individual identified as a "CEO." In the bid under IFB-0100 the joint venture's address was the same as that for Syllor, Inc., the entity identified in the bid to receive remittances, and both bids contained two Data Universal Numbering System (DUNS) codes and two taxpayers identification numbers (TIN), which identified both Syllor, Inc. and Ease Chemical.^{2/}

Syllor/Ease maintains that it is a valid joint venture and that its bids clearly identified the joint venture as the bidding entity. The protester states that unlike the situation in its prior protests to our Office where we agreed with the agency that the firm's bids were ambiguous, Syllor, Inc. and Ease Chemical, B-234723 et al. June 6, 1989, 89-1 CPD ¶ 530; Syllor, Inc./Ease, B-234870, June 9, 1989, 89-1 CPD ¶ 548; Syllor, Inc., B-234803, July 12, 1989, 89-2 CPD ¶ 41; and Syllor, Inc., B-234917, July 12, 1989, 89-2 CPD ¶ 42, its bids for these IFBs do not identify the bidder as both a joint venture and a corporation.

To be responsive, a bid must constitute an unequivocal offer to provide without exception exactly what is required at a firm, fixed price. Syllor and Ease Chemical, B-234723 et al., supra. The determination as to whether a bid is responsive must be based solely on the bid documents themselves as they appear at the time of bid opening. Haz-Tad, Inc., et al., 68 Comp. Gen. 92 (1988), 88-2 CPD ¶ 486. Further, an award to an entity other than that named in the bid constitutes an improper substitution of bidders. Id. However, the bid should not be rejected where

^{2/} The agency also mentions in its reports, but does not cite as a reason for rejection of Syllor/Ease's bids, that performance would occur at locations different from the bidder's address. In our view the fact that performance will not occur at the bidder's address is not at all unusual and would clearly not constitute a reason for rejection of the bids.

it is possible to identify sufficiently the actual bidder so that it would not be able to avoid the obligation of the bid. Moore Service, Inc. B-212054, Dec. 6, 1983, 83-2 CPD ¶ 648.

In our view there is no question as to the identity of the bidder. Our prior decisions concerning Syllor/Ease all found as fatal flaws its unexplained marking on the bid forms that it was both a corporation and a joint venture and its insertion of the DUNS code and employer/taxpayer identification number of only a single entity, Syllor, Inc. Neither of these defects is present here. Although the agency believes the use of the term "CEO" to be inconsistent with a joint venture form of business, the mere fact that the individual signing the bid identified himself as "CEO" does not constitute grounds for rejection of the bids. See Syllor, Inc. and Ease Chemical, B-234723 et al., supra. Nor do we see why the bidder's business address cannot be the same as that of Syllor, Inc., one of the partners in the joint venture. We know of no requirement that a joint venture have a separate address. Syllor, Inc., is not otherwise separately identified in the bid as the bidding entity, and consequently we do not see how the joint venture's mere use of the Syllor address causes any confusion as to the bidder's identity. Finally, concerning Syllor/Ease's insertion of the DUNS code and TINS of both partners, there is no indication in the bid that the partners somehow intended to bid separately. Since the protester does not have its own DUNS code or a TIN, its insertion of both partners' numbers seems a logical alternative to leaving the space provided for that information blank.

In short, we do not think the bids are ambiguous as to the bidding party. The protester identified itself as the joint venture Syllor Inc./Ease Chemical, checked the appropriate space indicating that it was a joint venture, and provided the DUNS code and TINS of both partners to the venture. We see nothing inconsistent or contradictory in this. We therefore find that the agency improperly rejected Syllor/Ease's bids as nonresponsive. Accordingly, we sustain the protests.

We recommend that award be made to Syllor/Ease if it is otherwise eligible for the line items not yet awarded under

which protester is low. As for the line items that have been awarded we recommend that the contracts be terminated and award made for the remainder of the requirements to Syllor/Ease if that firm is otherwise eligible. The protester is also entitled to the costs of filing and pursuing its protests, including attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.6(d)(1) (1989).

The protests are sustained.

for James A. Hutchinson
Comptroller General
of the United States