



Comptroller General
of the United States

Washington, D.C. 20548

Evans

Decision

Matter of: Moniaros Contracting Corp. *REF 10-10*
File: B-244682.3
Date: December 12, 1991

Michael R. Strauss, Esq., Hollander & Groner, for the protester.
Eugene Drexler, Esq., for Trataros Construction, Inc., and Bill C. Giallourakis, Esq., for Sharp Construction Co., Inc., interested parties.
Herbert F. Kelley, Jr., Esq., and Major Bobby G. Henry, Jr., Esq., Department of the Army, for the agency.
Catherine M. Evans, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Contracting officer's alleged post-bid opening acceptance of second low bidder's price reduction, which displaced protester's apparent low bid, was proper where record establishes that price reduction letter was present in bid package before bids were opened but was overlooked by bid opening official.

DECISION

Moniaros Contracting Corp. protests the award of a contract to Trataros Construction Co., Inc. under invitation for bids (IFB) No. DABT35-91-B-0018, issued by the Department of the Army for maintenance and repair of family housing at Fort Dix, New Jersey. Moniaros alleges that the contracting officer improperly allowed Trataros to reduce its price after bid opening, thus displacing Moniaros as low bidder.

We deny the protest.

Four firms submitted bids by the June 24, 1991, bid opening. Recorded prices of the bids were as follows:

Moniaros	\$1,920,638
Trataros	1,971,350
Sharp Construction Co., Inc.	1,944,315
H. Angelo & Co., Inc.	4,686,510

Immediately after bid opening, the Trataros representative who had been present at the opening, Ms. Tammy Minervini,

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telephoned Trataros's office manager, Ms. Helen Kapsalis, to report the results. According to Trataros, Ms. Kapsalis realized upon hearing the results that Trataros's recorded price did not include a 5 percent overall reduction that had been made by means of a letter included in the bid package. Ms. Kapsalis instructed Ms. Minervini to find the bid opening official, Ms. Carole Leonard, and inform her about the modification letter. Ms. Kapsalis then telephoned the bid opening official to call her attention to the letter. According to the Army, Ms. Leonard discovered the modification letter in Trataros's bid envelope after Trataros brought it to her attention. The letter reduced Trataros's price to \$1,872,782.50, below Moniaros's bid. (After correction of arithmetic errors, Trataros's price was increased to \$1,899,572.50, still lower than Moniaros's price.)

On August 9, Moniaros filed this protest challenging the proposed award to Trataros based on the alleged appearance of impropriety created by the post-bid opening discovery of the modification letter. Rather than furnishing any affirmative evidence of impropriety, however, Moniaros alleged that the appearance of impropriety arises from the agency's and Trataros's inconsistent accounts of the discovery of the modification letter. We held a hearing in our Office on November 12 to explore whether the allegedly inconsistent accounts of the discovery of the letter cast doubt on whether the letter was present in Trataros's bid package at bid opening. Four witnesses--Ms. Leonard, Ms. Minervini and Ms. Kapsalis, as well as the agency's bid recorder, Mr. Ray Blauvelt--gave sworn testimony concerning the events surrounding the bid opening and discovery of the letter.

As an example of an alleged inconsistency, Moniaros notes that the agency's bid recorder, Mr. Blauvelt, and Ms. Leonard both signed a memorandum dated June 24 in which Ms. Leonard stated that she had overlooked Trataros's modification letter at bid opening because it was placed behind the bid. However, in an October 25 affidavit and at the hearing, Mr. Blauvelt testified that he had opened Trataros's bid to hand the contents to Ms. Leonard, and saw the modification letter on top of the other bid documents. Video transcript (VT) 11:56:22; 12:02:06. As another alleged inconsistency, Moniaros points to Ms. Minervini's affidavit and testimony at the hearing stating that she located Ms. Leonard in the lunchroom and informed her of the modification letter, and contrasts Ms. Leonard's pre-hearing affidavit stating that she was alone in her office when a telephone call from Ms. Kapsalis prompted her to find the modification letter in Trataros's bid package. While apparently conceding that the witnesses' hearing testimony was relatively consistent as to this and other details,

Moniaros maintains that the prior inconsistent statements damage the witnesses' credibility and underscore the appearance of impropriety; Moniaros concludes that this appearance of impropriety compels rejection of Trataros's bid.

Based on the written record and the hearing record, we find no evidence of impropriety, and conclude that Trataros's bid modification was enclosed with the bid before bid opening. We base our conclusion primarily on the fact that affirmative evidence was presented in the written record and at the hearing--specifically, Mr. Blauvelt's affidavit and uncontroverted testimony--indicating that the modification was in the envelope at bid opening, and there was no other evidence to the contrary. In fact, all of the evidence and testimony presented is consistent with the conclusion that the modification was included in the bid package. In this regard, Ms. Kapsalis testified that she had sealed the modification letter inside the bid envelope on the Friday afternoon before the Monday bid opening, VT 13:01:16, and Mr. Blauvelt testified that he saw the letter when he opened Trataros's bid. VT 11:56:22. Ms. Leonard testified that, while she did not notice the letter when Mr. Blauvelt handed her the bid, VT 12:12:40, she discovered it in the envelope with the bid when Ms. Minervini prompted her to look for it after bid opening. VT 12:20:24. Ms. Minervini testified that she was unaware that the envelope contained a reduction letter until Ms. Kapsalis informed her of it when she called Ms. Kapsalis to report the bid results. VT 12:46:42; 12:46:53. We conclude that the letter was present in the bid package, and that the agency properly determined Trataros to be the low bidder. See Kentucky Bridge and Dam, Inc., B-243394.2, Aug. 8, 1991, 91-2 CPD ¶ 177.

The alleged inconsistencies in the accounts of the discovery of the modification letter were either not inconsistencies at all or were resolved at the hearing. For example, there is no conflict between Mr. Blauvelt's concurrence with Ms. Leonard's memorandum stating that she had overlooked Trataros's modification letter at bid opening because it was placed behind the bid and Mr. Blauvelt's affidavit stating that he saw the modification letter on top of the other bid documents when he opened the bid. In signing Ms. Leonard's memorandum, it appears to us that Mr. Blauvelt was merely corroborating her statement that she did not notice the letter until after bid opening; he was not indicating independently that he did not see the letter. Thus, Ms. Leonard's written statement and Mr. Blauvelt's concurrence are consistent with their affidavits and hearing testimony, which essentially established that Ms. Leonard did not read any letter that was in Trataros's bid package because bid packages often contain meaningless cover letters, VT 12:12:40; 12:41:00, and Mr. Blauvelt did not

inform Ms. Leonard that the letter he saw was a reduction letter because he had never seen a reduction letter before and did not believe it would have any effect on the bid.¹

The alleged inconsistency regarding Ms. Leonard's discovery of the reduction letter was resolved by the hearing testimony, which established that Ms. Minervini located Ms. Leonard shortly after bid opening and informed her of the letter as Ms. Leonard was retrieving her lunch from a room near her office. VT 12:17:58. The two women then returned to Ms. Leonard's office, where Ms. Leonard went inside to look for the letter, VT 12:20:01, and Ms. Minervini waited outside the closed door. VT 12:21:50. Moniaros makes much of the fact that Ms. Leonard's pre-hearing affidavit did not include this particular sequence of events, but instead indicated that she had first learned of the reduction letter when a Trataros employee telephoned her. When questioned about this omission at the hearing, Ms. Leonard acknowledged that her affidavit was incomplete in this regard. VT 12:27:24. Based on Ms. Leonard's highly credible testimony, we must conclude that she either did not think the manner in which she was notified of the existence of the letter was important, or simply did not think of it at all, when she executed the affidavit.

While the foregoing are only two examples of alleged inconsistencies in the record, we have reviewed all of Moniaros's allegations and conclude that any actual inconsistencies were similarly resolved at the hearing; we therefore find that the alleged inconsistencies do not provide a basis to ignore the clear evidence that Trataros submitted its bid modification at bid opening.

In its post-hearing comments, Moniaros speculates that there was ample opportunity for Trataros to insert the letter into its bid package after bid opening while the bids sat in Ms. Leonard's closed but unlocked office as she went down the hall to room 327, next door to the bid opening room, to retrieve her lunch. Moniaros's speculation is unsupported by the written record and the hearing testimony.

¹Moreover, while Moniaros points out in its post-hearing comments that Mr. Blauvelt previously concurred with Ms. Leonard's written statement that the modification was not discovered until after bid opening, Moniaros did not raise this alleged inconsistency at the hearing, where it could have questioned Mr. Blauvelt directly about the matter. In addition, Moniaros failed to question Ms. Leonard about her written statement that she did not see the letter because it was "behind the bid," even though Mr. Blauvelt testified that the letter was on top of the bid.

Ms. Leonard testified that her office is visible from the hallway in front of room 327, VT 12:29:13, that it took her less than 1 minute to get from one room to the other, VT 12:28:54, and that she had just retrieved her lunch when Ms. Minervini found her there. VT 12:17:58. Further, although the record shows that Ms. Minervini had attended other bid openings at Fort Dix, there is no evidence that she knew where Ms. Leonard's office was located, that she went to Ms. Leonard's office and found it unattended, or that she knew the bids were in the unattended office. There thus is no basis for concluding that Trataros placed the letter in the package with the bid after bid opening.²

In sum, the only evidence presented in the written record and at the hearing is that Trataros's bid reduction letter was present in the bid package at bid opening; there is no evidence to the contrary. We therefore have no basis to question the proposed award to Trataros based on its modified bid price. See Kentucky Bridge and Dam, Inc., supra.

The protest is denied.


for James F. Hinchman
General Counsel

²We note that if Moniaros had availed itself of the opportunity to examine Trataros's bid documents at the bid opening, as permitted by Federal Acquisition Regulation § 14.402-1(c), it would not need to speculate as to how the modification letter came to be in Trataros's bid envelope. See Kentucky Bridge and Dam, Inc., supra.