



Comptroller General  
of the United States

Washington, D.C. 20548

148579

## Decision

**Matter of:** Probe Loss Prevention

**File:** B-250781

**Date:** February 12, 1993

Lynn H. Brooks for the protester.  
Mona S. Snyder and Robert S. Chichester, Esq., Environmental Protection Agency, for the agency.  
Neill Martin-Rolsky, Esq. and Barbara R. Timmerman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Agency rejection of bid as nonresponsive because of uncertainty as to the identity of the actual bidder is proper where bid did not contain name of firm that actually submitted the bid.

### DECISION

Probe Loss Prevention (Probe) protests the rejection of its bid as nonresponsive under Environmental Protection Agency (EPA) invitation for bids (IFB) No. C200307T1 for on-site security services at an EPA facility in Athens, Georgia. EPA maintains that it rejected Probe's bid because it was unsigned and unaccompanied by any other material which indicated the intention of a specific bidder to be bound by the bid. Probe maintains that any errors in its bid were minor informalities that were immediately corrected after bid opening and that EPA rejected its bid because of unlawful discrimination.

We deny the protest.

EPA received nineteen bids in response to the IFB. For varying reasons, EPA rejected the four lowest bids as nonresponsive. Probe was the third lowest bidder. Probe left blank the blocks in the bid that required the bidder's name, address and telephone number, the name and title of the person authorized to sign the offer, and the bidder's signature and date of the offer. Several other blocks were also left blank. Although "Lynn H. Brooks" was identified in several places in the bid as President, in only one instance was the name of the company headed by Ms. Brooks listed. This one exception identified Ms. Brooks as the President of "CASA." The names "Tommy Lee Brooks, Sr." and

"Tommy Lee Brooks, Jr." also appeared in several places in the bid, along with the titles "Sect./Treas," and "V.P.,"-- again without company names. The taxpayer identification number (TIN) supplied by the bidder belonged to Probe. The bid had been mailed to EPA in an envelope bearing the return address of "CASA Security."

An EPA contract specialist contacted Ms. Brooks. The contract specialist thought that the omissions in what he believed was CASA's bid might be corrected as minor informalities under section 14.405 of the Federal Acquisition Regulation (FAR). After several written and oral exchanges, the contract specialist learned that the bid had actually been submitted by Probe. According to Ms. Brooks, Probe had recently acquired CASA. Reports obtained by EPA from Dun & Bradstreet concerning CASA and Probe indicated that Ms. Brooks of Probe had reported that CASA had been "dissolved." When the contracting officer reviewed the matter, she decided that section 14.405 did not apply to this situation. Accordingly, she rejected the bid as nonresponsive, citing FAR § 14.404-2.<sup>1</sup>

Probe believes that its identity and intention to be bound were sufficiently established in its bid, both as originally submitted, and as supplemented by the information given the contract specialist after bid opening. Probe notes that, under the FAR, "minor informalities" can be corrected after bid opening. Probe argues that the average small business person does not know what makes a bid nonresponsive. In any event, according to Probe, the true reason EPA rejected its bid is discrimination against Ms. Brooks based on gender and physical disabilities.

We think EPA correctly rejected Probe's bid as nonresponsive. The bid did not clearly evidence Probe's identity and consequently acceptance of the bid would not result in a binding commitment by a specific, clearly identified bidder. Syllor, Inc./Ease, B-234803, July 12, 1989, 89-2 CPD ¶ 41. Probe's name wasn't mentioned even once in the bid; another name, CASA Security, appears instead. Nor was the bid accompanied by any other documentation which named Probe as the bidder. Cf. Loop to Loop Messenger Service, *supra*. The presence of Probe's TIN in the bid does not remedy the problem. Without some cross-reference to Probe's name in the bid or accompanying

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<sup>1</sup>Section 14.404-2 of the FAR states, in pertinent part,

"(a) Any bid that fails to conform to the essential requirements of the invitation of bids shall be rejected."

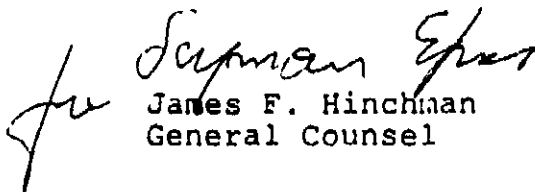
documentation, there was no way that EPA could have deduced that the bidder was actually Probe. More importantly, however, agencies are not required to deduce the identity and willingness to be bound of a bidder from cryptic and otherwise unexplained information in order to render a bid responsive. Id.

Although the protester argues that the ambiguity is a minor informality which it should be allowed to correct, since responsiveness is determined from the face of the bid at bid opening, post-bid opening explanations are unacceptable and cannot be used to cure a nonresponsive bid. Syllor, Inc. and Ease Chemical, B-234723 et al., June 6, 1989, 89-1 CPD ¶ 530.

On the question of the ability of the average bidder to know, understand, and comply with the minimum standards and requirements applicable to bidding on government contracts, it is the bidder's responsibility to familiarize itself with the applicable rules and prepare its bid in a way which ensures the contracting officer's ability to evaluate and accept the bid as submitted, and thereby create a binding contract between the government and the bidder. The bidder's signature on the bid is but one element of that responsibility. Loop to Loop Messenger Service, supra.

Finally, with reference to Probe's claim that EPA's action was grounded in unlawful discrimination, Probe has offered, and the record contains, no evidence to support this assertion. Mere speculation cannot serve as the basis for sustaining a protest. Automated Data Management, Inc., B-234549, Mar. 2, 1989, 89-1 CPD ¶ 229.

The protest is denied.

  
James F. Hinchman  
General Counsel