



Decision

Matter of: Grosjean Contractors, Inc.

File: B-258851

Date: February 9, 1995

DECISION

Grosjean Contractors, Inc. protests the award of a contract to Lauderdale Construction Company, Inc., under invitation for bids (IFB) No. F11602-94-B-0021, issued by the Department of the Air Force for roof removal and replacement. Grosjean contends that Lauderdale was ineligible for award because it failed to complete a required submittal properly.

We dismiss the protest.

The IFB, a small disadvantaged business (SDB) set-aside, contemplated the award of a firm, fixed-price contract to remove and replace the built-up roofing system (BURS) at the commissary at Barksdale Air Force Base, Louisiana. The IFB required bidders to furnish five submittals, two of which are relevant to this protest.

Submittal No. 1, the BURS Manufacturer's Certification, was identified as a qualification for award of the contract and had to be submitted with the bid for acceptance by the contracting officer. Submittal No. 1 required the identification of the roofing contractor and had to be signed by the roofing manufacturer as certification that the contractor was an approved applicator of the manufacturer's roofing system. The manufacturer also had to certify that it would execute a required 20-year warranty/guarantee for all work completed in accordance with the specifications. Submittal No. 2, the System Summary Sheet, was designed to present the BURS project requirements to the system manufacturer so that it could ascertain the technical aspects of the project and the acceptability of the design to its 20-year warranty system. Unlike Submittal No. 1, submittal No. 2, was only required to be furnished prior to award, and not as part of the bid. According to the IFB, both the offeror/bidder and the BURS manufacturer were required to sign the summary sheet. However, the instructions on submittal No. 2 provided that the roofing contractor and the manufacturer were required to sign.

Six bids were opened on September 15, 1994, with Lauderdale submitting the apparent low bid and Grosjean submitting the next low bid. Lauderdale certified itself as an SDB and included completed submittal Nos. 1 and 2. On submittal No. 1, Lauderdale identified its subcontractor, Acme Roofing and Sheet Metal, Inc., as the approved roofing contractor. It was signed, as required, by the roofing manufacturer, Schuller Roofing Systems. Acme signed Lauderdale's submittal No. 2, identifying Schuller as the manufacturer. Grosjean's bid included only a completed submittal No. 1, signed by the manufacturer, Schuller, and identifying Grosjean as the roofing contractor.

On September 19, Grosjean filed an agency-level protest challenging the responsiveness of Lauderdale's bid based on the identification and signatures of Acme on submittal Nos. 1 and 2. Grosjean alleged that award to Lauderdale was improper because Acme, a non-SDB, was using Lauderdale, a qualified SDB, as a "front" to win the contract. Grosjean also contended that it was improper to accept Lauderdale's submittal No. 2 because it was not signed by the bidder, Lauderdale. The Air Force denied the protest and awarded the contract to Lauderdale on September 30. Grosjean then filed this protest with our Office.

In its protest to our Office, Grosjean challenges the Air Force's acceptance of Lauderdale's submittal No. 2 as improper because it was not signed by Lauderdale.¹ Observing that the submittal requires the signature of an approved roofing contractor and the IFB requires the bidder's signature, Grosjean argues that Lauderdale, itself not an approved roofing contractor, was unable to meet this requirement, and thus was ineligible for award. In essence, Grosjean contends that Lauderdale's bid is non-responsive. This argument is without merit.

¹Grosjean's protest attached its agency-level protest but did not specifically state that it continued to challenge Lauderdale's use of a non-SDB subcontractor in performance of this contract. To the extent that Grosjean is challenging this aspect of Lauderdale's bid, the protest is without merit. The IFB advised bidders that "they must perform a minimum of 25 percent of the contract if any of the project is to be performed using subcontractors. Lauderdale acknowledged this requirement and there is no evidence in the record that Acme is using Lauderdale as a "front" to perform this contract. Whether Lauderdale meets the 25-percent requirement is a matter of contract administration which our Office does not review. 4 C.F.R. § 21.3(m) (1) (1994).

While Grosjean views proper completion of submittal No. 2 as a matter of bid responsiveness, it in fact relates to Lauderdale's ability to perform the contract--a matter of contractor responsibility. Responsiveness deals with a bidder's unequivocal promise, as shown on the face of its bid, to provide the items or services specified by the material terms of the IFB. American Spare Parts, Inc., B-224745, Jan. 2, 1987, 87-1 CPD ¶ 4. Here, Lauderdale took no exception to any of the performance obligations specified in the IFB; thus its bid was responsive.

Although Lauderdale furnished submittal No. 2 with its bid, it was not required to do so. Rather, the submittal, which concerns the roof warranty, was designed to enable the agency to determine whether the roof, as installed, would meet the requirements of the 20-year warranty. Accordingly, this requirement involves a matter of the bidder's responsibility because it relates to the bidder's ability and how it intends to perform the contract and not to the bidder's legal obligation to provide the warranty. See AMKO Constr. Co., Inc., B-234309.2, July 12, 1989, 89-2 CPD ¶ 35; Western Roofing Serv., B-234314.2, May 22, 1989, 89-1 CPD ¶ 486.

Submittal No. 2 required the signatures of both the manufacturer and the roofing contractor. Lauderdale is a general contractor which subcontracted with Acme to perform a portion of this contract. Nothing in the IFB prohibited the use of a subcontractor and nothing prohibited Lauderdale from meeting the submittal requirement by having its subcontractor, an approved roofing contractor, sign the submittal.² Lauderdale, as the prime contractor-bidder and responsible for successful performance of the work, furnished the signed submittal with its bid, implicitly acknowledging its responsibility.

²It is true that the IFB instructed the bidder to sign the submittal, while the submittal indicated that an approved roofer was required to sign it. The requirement thus was patently ambiguous with regard to who should sign in situations where the bidder and roofer were not the same entity. In view of the ambiguity, we agree with the agency that the failure of Lauderdale also to sign the submittal as bidder is a minor informality which can be waived by the contracting officer. See Federal Acquisition Regulation § 14.405. Completion of the submittal with the roofer's signature met the agency's requirements and the failure to include Lauderdale's signature had no effect on the responsiveness of its bid. Any protest of the ambiguity would be untimely, since protests of alleged solicitation improprieties must be filed no later than the bid opening date. 4 C.F.R. § 21.2(a)(1).

We do not review matters of affirmative responsibility absent a showing of possible fraud or bad faith on the part of procurement officials, or that definitive responsibility criteria in the solicitation may have been misapplied, 4 C.F.R. § 21.3(m)(5). No such showing has been made in this case.³

The protest is dismissed.



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Assistant General Counsel

³We also note that there is no evidence that Grosjean was prejudiced by the Air Force's acceptance of Lauderdale's submittal No. 2, as executed. Grosjean did not furnish its submittal No. 2 with its own bid. Further, the protester does not argue that it would have changed its bid in any way, such as lowering its price, had it known that it could have a roofing subcontractor sign submittal No. 2 in lieu of the contractor which submitted the bid. Thus, how the submittal was executed had no apparent effect on Grosjean's bid submission. In the clear absence of prejudice, we will not disturb a contract award. American Mutual Protective Bureau, Inc., B-229967, Jan. 22, 1988, 88-1 CPD ¶ 65.