



United States Government Accountability Office  
Washington, DC 20548

## Decision

**Matter of:** Draughon LLC

**File:** B-413008.2

**Date:** September 30, 2016

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Amy M. Miller, Draughon LLC, for the protester.  
Capt. Meghan E. Mahaney, and Scott N. Flesch, Esq., Department of the Army, for the agency.  
Paul N. Wengert, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest that awardee's bid should have been rejected as nonresponsive is denied where agency properly waived omission of unit prices as minor informality, where bid was signed by representative of awardee, and where bid provided licenses of subcontractor's employees to meet requirement for proof of state license.

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### DECISION

Draughon LLC, of Dunn, North Carolina, a small business, protests the award of a contract to Gregory Landscape Services, Inc., also a small business,<sup>1</sup> of Lexington, South Carolina, by the Department of the Army, under invitation for bids (IFB) No. W9124G-16-B-0002 for grounds maintenance services for Fort Rucker, in Alabama. Draughon argues that it was able to see only parts of Gregory's bid, it

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<sup>1</sup> The bids submitted by both firms represented that each was a woman-owned small business for this procurement. Draughon states that during this protest, the Small Business Administration (SBA) ruled that Gregory is "other than small" for this procurement. Email from President of Draughon to Counsel for Army and to GAO, Sept. 19, 2016, at 1. Determinations of small business status are matters within the statutory jurisdiction of the SBA, so this decision expresses no view on that issue, and the effect of the SBA ruling is not at issue in this protest.

alleges that Gregory failed to properly bid on all contract line items, failed to submit the license of an Herbicide Pest Applicator as the IFB required, and failed to have the bid signed by an employee.

We dismiss the protest in part and deny it in part.

## BACKGROUND

The IFB, issued on March 10, 2016, sought bids to perform commercial grounds maintenance services at airfields at Fort Rucker, as well as stage fields and other Army aviation-related sites in Alabama and Florida for a base year and four option years. IFB Performance Work Statement (PWS) §§ 1.1-1.3; IFB amend. 1 at 45. The IFB incorporated Federal Acquisition Regulation (FAR) clause 52.219-30, designating the solicitation as a set-aside for women-owned small businesses, and provided that the Army would award a single fixed-price requirements contract to the bidder “whose bid, conforming to the invitation for bids, will be most advantageous to the Government, considering only price and price related factors included in the invitation.” IFB at 86, 90; IFB amend. 1 at 45.

The IFB requested pricing for 18 contract line items (CLINs) each year, each of which listed a quantity that reflected the number of times the contractor would have to care for (mow, trim, etc.) particular areas over a year, and requested a unit price and an extended price for each. IFB § B. To be responsive, bidders were also required to submit “[p]roof of [s]tate certification for herbicide application.” IFB amend. 1 at 43.

The Army conducted a public bid opening on April 14, at which the contracting officer opened five bids, including bids from Gregory and Draughon. A representative of Draughon was present to witness the bid opening. The contract specialist announced aloud the name of each bidder, its city and state, the amendments expressly acknowledged on the bid cover page, and the bidder’s total prices for the base year, the total price for each option year, and the total for all 5 years. Contracting Officer’s Statement at 1. After all five bids had been opened and announced, the contracting specialist stated that Gregory appeared to have submitted the lowest bid. Id.

According to the contracting officer, upon hearing that Gregory was the apparent low bidder, Draughon's representative objected that the bid opening process was improper,<sup>2</sup> and demanded that he be allowed to review the bids. Id. The contracting officer states that the angry tone and behavior of Draughon's representative led her to conclude that it was necessary to secure the bids, and end the bid opening without reading the bids or allowing Draughon's representative to have access to them. Id.

The following day, the contracting officer and contract specialist reviewed the bids. They first confirmed that their calculations of the bid totals were correct. Id. In reviewing Gregory's bid, they noted that the bid acknowledged both IFB amendments, and had been signed by an individual identified as a Gregory representative in the company's online records. Id. The bid included a copy of a document showing that Gregory's subcontractor was authorized to do business in Alabama. Agency Report (AR) Tab 6, Gregory Bid, at 84. The bid also included copies of two pesticide applicator permits, showing that the named individuals were both certified as commercial applicators by the state of Alabama, and a letter from the subcontractor, stating that those individuals were its employees. Id. at 85-87.

The contracting officer and contract specialist also noted that the bid for Gregory was handwritten and legible, and that a price of "\$0.00" was entered for three of the CLINs for each year: developing a herbicide/fertilizer/soil amendment program, updating that program annually, and submitting an annual contractor manpower report. Contracting Officer's Statement at 2. They also noted that for most CLINs, Gregory provided only a total price, but not a separate unit price. Id. at 2; AR Tab 6, Gregory Bid, at 36-80.

The contracting officer and contract specialist prepared an abstract of the bids during their review, as follows:

Gregory Landscape	\$5,050,795
Draughon LLC	\$5,992,546
Tellus	\$9,703,516
Connie Slaughter	\$9,927,777
Victoria Construction	\$15,852,277

AR Tab 7, Abstract of Offers, at 1.

The contracting officer determined that the omission of unit prices was a minor informality, which she asked Gregory to correct. Contracting Officer's Statement

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<sup>2</sup> Draughon states in its protest that its representative at the bid opening contended that all 90 CLINs from each bid should have been read aloud, not just the totals. Protest at 1.

at 2. On May 24, Gregory submitted a typed copy of its bid that, for each CLIN, supplied the missing unit price. Id.

On June 15, the Army states that it finalized the award of the contract to Gregory. On June 17, Draughon states that it received a call from an employee of Gregory's subcontractor, asking if Draughon would be interested in a subcontract to perform mowing work under the contract. This protest followed.

## ANALYSIS

As an initial matter, the Army requests dismissal of the protest as untimely. The Army argues that Draughon should have filed its protest within 10 days of the April 14 bid opening. Dismissal Request at 3-4. Draughon argues that its protest is timely because it was filed within 10 days of when it learned of the award on June 17, and that until then, the agency had not responded to Draughon's inquiries or had characterized the procurement as in legal review. Protester's Dismissal Response at 2-3; Comments at 3. Timeliness in these circumstances is not to be measured from the date of bid opening; instead, a protester may file a timely protest upon learning that the agency will proceed with an award that the protester believes is inconsistent with law or contrary to the terms of the IFB. Dresser Indus., B-228324, Dec. 29, 1987, 87-2 CPD ¶ 634 at 3; Automated Power Sys., Inc., B-224203, Feb. 4, 1987, 87-1 CPD ¶ 109 at 2-3; R.R. Gregory Corp., Apr. 19, 1985, 85-1 CPD ¶ 449 at 2. Draughon's protest is timely because it was filed within 10 days of when Draughon knew or should have known that the Army had proceeded to award the contract to Gregory.

Draughon's protest argues that Gregory's bid was unacceptable because it did not provide unit prices, lacked a licensed herbicide applicator (or provided one from an employee of another business), and was signed by an employee of a different firm.<sup>3</sup>

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<sup>3</sup> Draughon's protest argued that bidding a price of zero for some CLINs represented unbalanced pricing by Gregory. The contracting officer explained her judgment that those prices did not constitute materially unbalanced pricing. To the extent that Draughon mentions the issue in its comments, it is only in the context of arguing that Gregory's bid did not comply with the limitation on subcontracting clause (which we address separately below). Comments at 3. Draughon did not attempt to rebut the Army's conclusion that Gregory's bid was not unbalanced, so we consider that issue abandoned. See Liberty St. E. Assocs., B-299486.3, June 15, 2007, 2007 CPD ¶ 112 at 3.

The Army submitted an agency report that included a copy of Gregory's bid. The contracting officer explained her actions, including her judgment that the CLINs priced as \$0.00 by Gregory did not present unbalanced pricing, that the lack of unit prices for some CLINs did not prevent the agency from properly comparing the bids on a common basis, and that the bid was responsive because it was signed by a representative of Gregory and contained an herbicide applicator license as required.

In its comments, Draughon challenges the validity of the signature on Gregory's bid, but only because the signature is not Gregory's owner. While true, Draughon does not meaningfully dispute the Army's conclusion that the person who signed the bid was an employee of Gregory who had authority to bind the company. Evidence required to show the authority of an individual signing a bid may be presented after bid opening. G & J Small Constr., Inc., B-286716, Feb. 5, 2001, 2001 CPD ¶ 22 at 2-3. The sufficiency of the evidence presented is largely a factual question to be resolved by the contracting agency after consideration of all the materials presented. Id. at 3. Here, the contracting officer found that Gregory's bid was signed by an individual who is publicly identified as the firm's representative. As such, Draughon's objection that the bid was not signed by the owner of the firm has no legal significance.

With respect to the requirement that the bid include proof of state certification for herbicide application, Draughon appears to concede that Gregory's bid included copies of current certificates from the State of Alabama. The protester nevertheless argues that the certificates were improper because the bid expressly stated that the individuals were employees of Gregory's subcontractor. Comments at 2. Draughon does not demonstrate that the IFB required pesticide applicator certificate(s) to be held by employees of the contractor itself, rather than a subcontractor. As such, Draughon fails to provide a factual basis for its claim that the Army should have rejected Gregory's bid as nonresponsive.

With respect to the lack of unit prices on some CLINs of Gregory's bid, the omission of unit prices from a bid does not render the bid nonresponsive when the low bid can be evaluated on a basis common to all bids; under these circumstances, the omission constitutes a minor informality that should be waived under FAR § 14.405. See Stanger Indus., Inc., B-279380, June 4, 1998, 98-1 CPD ¶ 157 at 4 (sustaining protest where agency improperly rejected bid that omitted unit prices). Here, the applicable quantities for each CLIN were specified in the IFB bid schedule, and the bids could be compared on a common basis. Despite the omission of unit prices from Gregory's bid, the CLIN prices could be added to calculate annual and overall totals for purposes of comparison. Accordingly, the Army properly waived the lack

of unit prices and found Gregory's bid to be responsive, so we deny Draughon's argument that the omission of unit prices from the bid made it unacceptable.<sup>4</sup>

The protest is dismissed in part and denied in part.<sup>5</sup>

Susan A. Poling  
General Counsel

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<sup>4</sup> Since Gregory's bid was responsive, we see no error in the Army's request that Gregory submit a copy of its bid with the unit prices filled in. The request was, at most, a bid verification that was within the contracting officer's discretion to obtain. FAR § 14.407-1.

<sup>5</sup> In its comments, Draughon argues that Gregory's bid shows that it will violate the terms of the limitation on subcontracting clause (known as the "50 percent rule"), FAR clause 52.219-30(d), which was incorporated into the IFB. Comments at 4; IFB at 86, 90. To succeed in such a claim, a protester must show that the challenged bid, on its face, indicated that the bidder could not and would not comply with the subcontracting limitation. Mechanical Equip. Co., et al., B-292789.2 et al., Dec. 15, 2003, 2004 CPD ¶ 192 at 22-23. Draughon's argument does not meet this standard; instead, it merely alleges that, for the base year, the total prices for CLINs requiring pesticide application are higher than the total prices for the remaining CLINs. Comments at 4. That fact is insufficient to show that the Army should have known from the face of the bid that Gregory would not comply with the terms of the limitation on subcontracting clause. Draughon makes other unsupported assertions, such as that Gregory failed to submit a subcontracting plan, or failed to include evidence of sufficient experience, but does not show that the IFB required bids to include that documentation. We dismiss the new issues raised in Draughon's comments as factually and legally insufficient.