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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-187008

DATE: October 28, 1976

MATTER OF: Hudgins & Company, Inc.

DIGEST:

Since grant contract included competitive bidding requirement, basic principles of Federal procurement law must be followed by grantee in absence of contrary provisions in grant contract. Even though all FPR provisions need not necessarily be followed to comply with basic principles, an action which follows FPR is consistent with such principles. Therefore, failure of only acceptable bid to include bid bond as required by solicitation may be waived since FPR § 1-10.103-4(a) provides exception when only one bid is received.

Hudgins & Company, Inc. (Hudgins), has objected to an award to the Continental Wrecking Corporation (Continental) made by the Metropolitan Atlanta Rapid Transit Authority (MARTA), Georgia, under a grant from the Urban Mass Transportation Administration (UMTA), Department of Transportation. The grant was made pursuant to the Urban Mass Transportation Act of 1964, as amended, Public Law 88-365, 49 U.S.C. § 1601, et seq. The grant covered the construction of a rapid rail transit system in the Atlanta area on a cost-sharing basis.

MARTA solicited bids for the construction of the transit system. Only two bids were received. Continental submitted a bid of \$229,983 but failed to submit a bid bond prior to bid opening. Hudgins failed to include in its bid package form DCC-1 entitled "Contractors Certification" which contained the bid amount. After bid opening Continental submitted a bid bond in the required amount. Hudgins likewise filed form DCC-1 offering a price of \$308,681. MARTA waived the failure to supply a bid bond and awarded the contract to Continental.

In the case of Illinois Equal Employment Opportunity Regulations for Public Contracts, 54 Comp. Gen. 6 (1974), 74-2 CPD 1, we made the following statement with respect to the applicability of basic principles of Federal procurement law to awards by grantees:

"It is clear that a grantee receiving Federal funds takes such funds subject to any statutory or regulatory restrictions which may be imposed by the Federal Government, 41 Comp. Gen. 134, 137 (1961); 42 Comp. Gen. 289, 293 (1962); 50 Comp. Gen. 470, 472 (1970), State of Indiana v. Ewing, 99 F. Supp. 734 (1951), cause remanded 195 F.2nd 556 (1952). Therefore, although the Federal Government is not a party to contracts awarded by its grantees, a grantee must comply with the conditions attached to the grant in awarding federally assisted contracts,

"We believe that, where open and competitive bidding or some similar requirement is required as a condition to receipt of a Federal grant, certain basic principles of Federal procurement law must be followed by the grantee in solicitations which it issues pursuant to the grant. 37 Comp. Gen. 251 (1957); 48 Comp. Gen. supra. In this regard, it is to be noted that the rules and regulations of the vast majority of Federal departments and agencies specify generally that grantees shall award contracts using grant funds on the basis of open and competitive bidding. This is not to say that all of the intricacies and conditions of Federal procurement law are incorporated into a grant by virtue of this condition of open and competitive bidding. See B-168434, April 1, 1970; B-168215, September 15, 1970; B-173126, October 21, 1971; B-178582, July 27, 1973. However, we do believe that the grantee must comply with those principles of procurement law which go to the essence of the competitive bidding system. See 37 Comp. Gen. supra. * * *" (Emphasis added.)

Our Office has held that to the extent our reviews will be concerned with Federal procurement policy, it will not be mechanically applied. On the contrary, we will only be concerned with the application of "basic principles." Copeland System, Inc., 55 Comp. Gen. 390 (1975), 75-2 CPD 237.

From a review of the grant agreement between MARTA and UMTA, we believe the foregoing principles are applicable here. The determinative language is found in section 109(a) of part II of the grant contract which reads, in pertinent part:

"Competitive Bidding. The Public Body shall not award or substantially amend any contract in an amount greater than \$2,000 pursuant to the Project, except for professional service contracts, without formal advertising, free, open, and unrestricted competitive bidding, and award to the lowest responsive and responsible bidder, unless UMTA specifically approves some other form of procurement or award to another party upon being satisfied by the Public Body that such action will adequately protect the Government's interests in encouraging competition, optimizing efficient performance of the project and minimizing its cost. * * *"
(Underscoring in original.)

Even though not all requirements applicable to Federal procurements necessarily apply to grant contracts, conformity with such requirements, unless contrary to provisions governing the grant contract, should establish the propriety of the action. Federal Procurement Regulations § 1-10.103-4(a) (1964 ed. amend. 48), applicable to Federal procurements in this situation, reads:

"Where an invitation for bids requires that a bid be supported by a bid guarantee and noncompliance occurs, the bid shall be rejected, except in the following situations when the noncompliance shall be waived unless there are compelling reasons contrary:

"(a) Where only a single bid is received. In such cases, however, the Government may or may not require the furnishing of the bid guarantee before award."

MARTA has taken the position that since Continental submitted the only acceptable bid, the failure to include a bid bond could be waived. Additionally, Continental did submit the bid bond prior to award.

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Counsel for Hudgins argues that while Hudgins failed to timely submit a form DCC-1, the intended bid price is ascertainable by examination of the penal sum indicated on the bid bond. Therefore, Hudgins is alleged to have submitted a valid bid which then would preclude MARTA from waiving Continental's failure to supply a bid bond prior to bid opening.

While Hudgins did submit a bid bond, the alleged intended price, computed from the bid bond, would not have been binding on Hudgins. Form DCC-1, omitted by Hudgins, reads in pertinent part:

"Bidder warrants, covenants and agrees and accept the following lump sum of

_____ /100 Dollars (\$_____).

as full compensation for furnishing all materials and for doing all the Work; or from the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the Work until its acceptance by the Authority, and for all risks of every description connected with the Work; also for all expenses incurred by or in consequence of the suspension or discontinuance of Work and for well and faithfully completing the work, and the whole thereof, in the manner and according to the Terms of the Contract, and the requirements of the Engineer under them."

Based on the bid submitted by Hudgins, we cannot conclude that Hudgins would have been obligated to perform the contract at its alleged bid price of \$308,681. The bid of Hudgins, then, was non-responsive for failing to include a price for the work to be performed. Regis Milk Company, B-180302, April 18, 1974, 74-1 CPD 203. Therefore, the omission of a bid bond from Continental's bid may be waived as only one responsive bid was received in response to the solicitation. FPR § 1-10.103-4(a) supra; 39 Comp. Gen. 796 (1960); see Johnson Auto Parts, B-182102, September 10, 1974, 74-2 CPD 157.

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Accordingly, the complaint of Hudgins is denied.

Deputy

W. H. K. H.
Comptroller General
of the United States