

DOCUMENT RESUME

02705 - [A185:884]

[Nonresponsive Bids Due to Deficient Bid Guarantee and Bid Bond]. B-188100. June 23, 1977. 4 pp.

Decision re: McNamara-Lunz Warehouses, Inc.; Central Moving and Storage, Inc.; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: Procurement Law II.
Budget Function: National Defense: Department of Defense -
Procurement & Contracts (058).

Organization Concerned: Department of the Air Force: Randolph
AFB, TX; Scobey Moving and Storage Co.

Authority: 54 Comp. Gen. 271. 44 Comp. Gen. 495. 54 Comp. Gen.
750. B-186084 (1976). B-163884 (1968). B-185803 (1976).
A.S.P.R. 7-1601.2.

The two protesters objected to the contracting officer's finding that their respective bids were nonresponsive because of a deficient bid guarantee and bid bond. A bid submitted by a corporation must be rejected where the bid bond was issued to a joint venture, but the award would be to only one member. The bidder was required to furnish bid guarantee for the full 60-day period specified in the invitation for bids, even though the invitation indicated that the contract would commence 28 days before the bid acceptance period expired. The contracting officer was not required to consider whether necessary State and local licenses had been obtained when determining a bidder's responsibility. The protest was denied. (Author/SC)

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DECISION



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

FILE: B-188100

DATE: June 23, 1977

MATTER OF: McNamara - Lunz Warehouses, Inc.;
Central Moving and Storage, Inc.

DIGEST:

1. Bid submitted by corporation must be rejected where bid bond was issued to joint venture, because contract award to corporation would not be to same legal entity named in bid bond, even where one member of joint venture was the corporation submitting the bid.
2. Where IFB specified 60-day bid acceptance period, bidder was required to furnish bid guarantee for full 60-day period even though IFB indicated that contract would commence 28 days before bid acceptance period expired. Bidder could not reasonably rely on such IFB provision to furnish bid bond for less than full bid acceptance period.
3. Where broadly and generally worded invitation provision requires bidders to obtain necessary state and local licenses needed for contract performances contracting officer is not required to consider whether such licenses have been obtained when determining bidder's responsibility.

McNamara-Lunz Warehouses, Inc. (McNamara-Lunz) and Central Moving and Storage, Inc. (Central) have protested the contracting officer's finding that their respective bids were nonresponsive because of a deficient bid guarantee and bid bond. Additionally, McNamara-Lunz protests the award to Scobey Moving and Storage Company (Scobey) on the grounds that Scobey does not possess the requisite intrastate operating authority to perform the contract. For the reasons that follow, the protests are denied.

Randolph Air Force Base issued solicitation F41606-77-90016 on October 29, 1976 requesting bids to meet its January 1, 1977 to December 31, 1977 requirements for packing, crating, and drayage of household goods for Bexar and 22 contiguous counties

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in Texas. Bids were requested for outbound services (Schedule I), for inbound services (Schedule II) and for intercity-interarea moves (Schedule III). Each schedule was broken down into four geographical areas. Award was to be made to the low bidder in each of the first three areas in Schedules I and III and to the aggregate low bidder for the first three areas of Schedule II. The fourth geographical area was to be awarded to the aggregate low bidder for that area in all three schedules.

The bids were opened on November 29, 1976, and Central was the low bidder for each of the three geographical areas of Schedule I and III, and McNamara-Lunz was the low bidder on the first three geographical areas of Schedule II. The contracting officer, however, found the bid bond of Central and the bid guarantee of McNamara-Lunz to be deficient and made award to, among others, Scobey.

Central's Bid Bond

The deficiency perceived had to do with the fact that the principal named in the bid bond and the bidder whose name appeared on the bid were not the same legal entities. The bid was submitted by "Central Moving and Storage, Inc." whereas the bid bond named "Central Moving and Storage, Inc. and Eddie Manns, an individual, a Joint Venture" as Principal. We agree with the Air Force that the bid could not be accepted under these circumstances. An award to "Central Moving and Storage, Inc." would be to an entity different from that named in the bond. In the event Central Moving and Storage, Inc. failed to complete any required contract documents or furnish any required bonds, the surety could maintain that it was not liable on the bond because the bond named as Principal the joint venture. New World Research Corporation, B-186084, August 31, 1976, 76-2 CPD 206; A.D. Roe and Company, Inc. 54 Comp. Gen. 271, 74-2 CPD 194; 44 Comp. Gen. 495 (1965). Accordingly, the Air Force acted properly in rejecting Central's bid.

McNamara-Lunz Bid Guarantee

The McNamara-Lunz bid guarantee expired on December 31, 1976, whereas the mandatory bid acceptance period ran through January 28, 1977. Relying on our decision B-163884, April 16, 1968, the contracting officer determined McNamara-Lunz's bid to be nonresponsive. There we held that a provision in an invitation which requires that a bid remain available for acceptance by the Government for a prescribed period in order to be considered for

award is a material requirement and that the failure to meet such a requirement by submitting a bid guarantee that was not coextensive with the bid acceptance period renders a bid nonresponsive. We have consistently maintained that view in more recent cases. See, Miles Metal Corporation, 54 Comp. Gen. 750, 75-1 CPD 145 and cases cited therein. McNamara-Lunz argues that the cited cases are inapposite, because, regardless of the bid acceptance period specified in the invitation, the only legally effective acceptance period is that period up to January 1, 1977. This is the case, according to McNamara-Lunz, because the bids were solicited specifically for the purpose of establishing a contract for the one-year period beginning January 1, 1977.

We do not believe there is merit to this argument. Armed Services Procurement Regulation (ASPR) § 7-1601.2 states as follows:

Period of Contract

(a) The following clause shall be used in [Shipment or Storage of Personal Property] contracts covering performance for an entire year.

PERIOD OF CONTRACT (1970 MAY)

This contract shall begin 1 January 19__ and shall end 31 December 19__, both dates inclusive, * * *.

(End of clause)

(b) When the period of performance is less than a calendar year, the above clause shall be modified to show the appropriate beginning and ending. However, the date for the end of the contract period shall not be later than 31 December of the year in which the contract is awarded.

In our opinion the ASPR requires only that the date for the end of the contract period shall not be later than "31 December of the year in which the contract is awarded." There is no mandatory requirement that the contract period must begin on January 1.

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Moreover, while the solicitation as issued contained the "Period of Contract" clause set forth in ASPR 7-1601.2(a), which provides for a calendar year period of performance, bidders were instructed by provisions elsewhere in the solicitation to provide a bid acceptance period of 60 days from the time of bid opening, which in this case occurred on November 29, 1976. In short, bidders were on notice that award could be made any time up to January 28, 1977. That being the case, the protester cannot reasonably contend that the solicitation unequivocally required the Air Force to accept its bid before January 1, 1977.

Scobey's Intrastate Authority

McNamara-Lunz also argues that Scobey, to whom the contracting officer has awarded part of the contract, is nonresponsible because it did not hold the requisite intrastate operating authority as required by the Texas Railroad Commission. In that regard Section J, Special Provisions, paragraph 4.c. of the solicitation, stated that:

"The contractor shall, without additional expense to the Government, be responsible for obtaining and maintaining any Federal, State, and/or local operating authorities, permits, licenses, etc., necessary to performance of the work and services specified in the contract."

In McNamara-Lunz Vans and Warehouses, Inc., B-185803, July 8, 1976, 76-2 CPD 20, affd. September 3, 1976, 76-2 CPD 217, we held that the identical language quoted above, because of its general nature, had no bearing upon the contracting officer's determination of responsibility.

Accordingly, the protest is denied.

Deputy


Comptroller General
of the United States