



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

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B-177984

July 30, 1973

Briggs and Morgan
Professional Association
2200 First National Bank Building
St. Paul, Minnesota 55101

Attention: James W. Bowers, Esquire

Gentlemen:

By telefax message dated February 8, 1973, and subsequent correspondence, you protested on behalf of your client, Conwed Corporation, the award of a contract to any other firm under solicitation No. FPMFO-T-5P278-A-1-23-73, issued by the General Services Administration (GSA).

The solicitation was issued by the Federal Supply Service of GSA for a definite quantity contract for 40 line items of portable office partitions. Award was to be made on an item-by-item basis. Bids were opened on February 1, 1973, and Conwed was the seventh low bidder on Items 1-20 and the sixth low bidder on Items 21-40. Pursuant to a determination of urgency, awards were made to the lowest bidders on March 16, 1973, as follows:

Harvard Interiors Manufacturing Company (Harvard) St. Louis, Missouri	Items 1-10 21-30 and 35-40
Hillside Metal Products (Hillside) Newark, New Jersey	Items 11-20 and 31-34

It is your contention that Conwed Corporation was the lowest responsive bidder under the solicitation because all lower bidders failed to identify known subcontractors as required in Paragraph 11 of the solicitation.

The solicitation provides, in pertinent part, as follows:

11. Identification of subcontractors: The information required by this provision is for use in administering the Equal Opportunity Program. Offerors shall list known subcontractors whose subcontracts will exceed \$50,000
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You claim that the failure of a bidder to list its subcontractors as stated in the above provision should require rejection of the bid. You state that if a bidder lists its subcontractors it may be precluded from accepting a lower price subcontract after bids are opened. You also refer to General Services Procurement Regulations (GSPR) 5B-2.202-70 which requires bidders on construction contracts with the Public Buildings Service (PBS) to list subcontractors in order to prevent the low bidder, after bid opening, from engaging in "bid shopping" for subcontractors.

While we have upheld the rejection of bids because of the failure to list subcontractors, in such cases the information was required to prevent "bid shopping" and the use of subcontractors other than those listed in the bid was specifically prohibited. 43 Comp. Gen. 206 (1963). However, in the present case as stated in paragraph 11, the purpose of listing known subcontractors is to assist the Government in administering the Equal Opportunity Program. In our opinion, failure to furnish this information prior to bid opening in no way vitiates the obligation of the contractor to comply with the Equal Opportunity clause which is required by FPR 1-12.003-1 to be included in all Government contracts and was included by reference in this case. Accordingly, we agree with GSA that the information required by paragraph 11 is intended for use in determining a bidder's responsibility rather than the responsiveness of its bid. In this connection, we are advised by GSA that contractors are not complying with the clause and that the requirements of the clause are not being enforced because of the difficulty of enforcing a clause which provides that "Bidders (offerors) shall list known subcontractors whose subcontractors will exceed \$50,000." (Emphasis added.) GSA further reports that the Director of the GSA National Buying Center has requested that action be initiated to delete this clause in future solicitations.

In these circumstances we must conclude that the listing of known subcontractors is not a material requirement of the bid and that the low bids of Harvard and Hillside were, therefore, responsive. In view thereof, we see no need to decide the issue of Conwed's responsiveness.

Accordingly, your protest is denied.

Sincerely yours,

Paul G. Dembling

For the
Comptroller General
of the United States