



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Sunrise International Group, Inc.

File: B-266357

Date: February 12, 1996

Ray E. Baker, Sunrise International Group, Inc., for the protester.
Captain Philip T. McCaffrey and William T. Stark, Esq., Department of the Army, for the agency.
Paul E. Jordan, Esq., Glenn G. Wolcott, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency properly accepted bid submitted under the bidder's trade name, instead of the formal corporate name, where the actual bidder's identity was so clear that the firm would not be able to avoid its contract bid obligations if the bid were accepted.
2. Agency properly awarded a contract to the low bidder's successor in interest where the original bidder sold the entire portion of its business embraced by the bid after bid opening and prior to award.

DECISION

Sunrise International Group, Inc. protests the award of a contract to the Ramada Hotel, Warren, Michigan under invitation for bids (IFB) No. DAKF61-95-B-0042, issued by the Department of the Army. Sunrise asserts that the award to the Ramada was improper for a variety of reasons, including alleged ambiguities regarding the bidder's identity and an allegedly improper substitution of bidders.

We deny the protest.

The Army issued the IFB on July 5, 1995, seeking bids to furnish meals, lodging, and transportation for applicants to the Military Entrance Processing Station in Detroit, Michigan. The IFB was a 100-percent small business set-aside for a 1-year base period (October 1, 1995 through September 30, 1996), with a 1-year option period. Four bids were submitted by the August 4 bid opening date. The Ramada, the incumbent contractor, submitted a bid of \$409,246. Sunrise submitted a bid of \$580,799. The other two bidders were found ineligible due to their status as other than small business concerns.

On September 21, the contracting officer contacted Ramada personnel to inform them that the contract would be awarded to the Ramada. At that time, the contracting officer was informed that the Ramada had been purchased by Four Towers Limited Partnership on August 17. The contracting officer requested that the new owners provide documentation substantiating the purchase. Four Towers provided documentation showing that it had purchased the Ramada in its entirety, and furnished new representations and certifications. The contract was awarded to the Ramada on September 22.

Sunrise first protests that the Ramada's bid should have been rejected on the basis that it was unclear what entity was bidding. Specifically, Sunrise asserts that although the bid was submitted under the name of the Ramada Hotel, the City of Warren's licensing records show the Ramada's owner, in March 1995, to be "K. Patel," while the taxes for the property in 1995 were billed to "Days Hotel." Sunrise also complains that the Ramada's bid indicated that the company was bidding as a Michigan corporation, but the bid was not signed by a corporate officer and the license application indicated that the hotel was owned by an individual, not a corporation.

In general, a contract cannot be awarded to an entity other than the one that submitted the bid. This rule applies in situations where it is unclear from the face of the bid which of two or more legal entities is the bidder, but it does not automatically prohibit an award where, as here, the bidder merely uses a trade name rather than a formal corporate name in the bid. In such instances, the bid may be accepted if there is evidence, existing and publicly available at the time of bid opening that establishes with reasonable certainty that the "actual" bidder would not be able to avoid the contract obligations if the bid were accepted. Sunrise Int'l Group, Inc., B-251956, Feb. 8, 1993, 93-1 CPD ¶114.

Here the bid was signed on behalf of the Ramada Hotel at 30000 Van Dyke Avenue, Warren, Michigan, by Rob Zarza, general manager. The agency has furnished documentation that restaurant and hotel licenses have been issued to the Ramada at the same address, based on an application filed by K. Patel for Ramada. Mr. Kiran Patel is president of KNP Corporation. Further, the agency has on file a standard form that authorizes Rob Zarza to sign on the Ramada's behalf, and also identifies the bidder as a Michigan corporation and Mr. Patel as its president. The contract records also contain a corporate certificate that identifies Mr. Patel as president of, and Rob Zarza as agent for, KNP Corporation. There is no evidence that Mr. Patel or KNP owns or operates any other entity that could be asserted as the real party in interest. On the record here, there is sufficient evidence to establish that Ramada is

simply a trade name under which the legal entity owning the hotel, KNP, is operating.¹

Sunrise next protests that award was improper due to the change in ownership between the time the bid was submitted and the time the contract was awarded. We disagree.

The transfer or assignment of rights and obligations arising out of a bid or proposal is permissible where the transfer is to a legal entity which is the complete successor in interest to the bidder or offeror by virtue of merger, corporate reorganization, the sale of an entire business or the sale of an entire portion of a business embraced by the bid or proposal. J.I. Case Co., B-239178, Aug. 6, 1990, 90-2 CPD ¶ 108; Harnischfeger Corp., B-224371, Sept. 12, 1986, 86-2 CPD ¶ 296.

Before awarding the contract to the Ramada, the agency obtained documentation showing that the entire hotel property had been sold to Four Towers, the new owners. Thus, the entire KNP business that was embraced by the bid or proposal, that is, the hotel itself, was sold to Four Towers. On this record, there is nothing objectionable about the award to Four Towers.

Finally, Sunrise asserts that the agency should have found that Four Towers was not a small business qualified for award of this contract. Our Office has no jurisdiction to review size determinations. The Small Business Act, 15 U.S.C. § 637(b)(6) (1994), gives the Small Business Administration (SBA), not our Office, the conclusive authority to determine matters of small business size status for federal procurements.

The protest is denied.

Comptroller General
of the United States

¹While the Michigan tax bill submitted by the protester was addressed to a "Days Hotel" located at 30000 Van Dyke Avenue, since the Ramada, located at that address, is the incumbent contractor and possesses licenses issued in the Ramada name, it is evident that the tax records are in error. Similarly, notwithstanding Mr. Patel's identification as "owner" on the license application, it is plain from the agency's records that Mr. Patel is the president of KNP corporation, which, at the time, owned the Ramada.