



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

B-178303

3/125
June 26, 1973

Mr. S. Ralph Gordon
Attorney at Law
Parkway Towers
Nashville, Tennessee 37219

Dear Mr. Gordon:

Reference is made to your letter of April 30, 1973, and prior correspondence from Capay Painting Corporation (Capay) and previous counsel protesting the award of a painting contract to Robert McMullan and Son, Inc. (McMullan), the low bidder under invitation for bids (IFB) F40650-73-B-0032 issued by the Arnold Air Force Station, Tullahoma, Tennessee.

IFB Special Provision A, entitled "Site Inspection", stated:

Prospective bidders must visit and inspect the site of the work. (See General Provision 54, Site Investigation.) Inspection may be arranged by contacting the Contracting Officer or Project Officer named in Special Provision F. Inspections will begin at 0800 on Monday of each week during the bidding period. Bidders should allow approximately one and one half to two days for the inspection.

It is contended that, since no representative from McMullan visited and inspected the site of the work after the issuance of the IFB, its bid should have been rejected by the contracting officer. In this regard, it is alleged that the drawings and specifications were incomplete and that McMullan could not have been aware of what the entire job entailed without a complete visual examination. It is stated that during the site examination made by Capay, areas of work were indicated to Capay that McMullan would not have known about without observation and having received similar instruction. It is contended that the bidding was prejudicial to Capay since it was bidding upon performing more work than McMullan.

General Provision 54, cited in Special Provision A, provided:

SITE INVESTIGATION (1965 JAN)

The Contractor acknowledges that he has investigated and satisfied himself as to the conditions affecting the work * * *. Any failure by the Contractor to acquaint himself with the available information will not relieve him from responsibility

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for estimating properly the difficulty or cost of successfully performing the work. * * *

In view thereof, the contracting officer considered the investigation to be for the protection of the bidder. Further, a representative of McMullan had inspected the installation on July 12, 1972, prior to the issuance of the immediate IFB, in connection with the preparation of a bid on another IFB, and had made telephone inquiries after the issuance of the immediate IFB regarding certain aspects that he did not recall. Therefore, the contracting officer concluded that it was not material that McMullan had not made a site inspection under the IFB and awarded the contract to McMullan.

Our Office concurs in the action taken by the contracting officer. Although Special Provision A stated that prospective bidders must visit and inspect the site, it is clear from the Site Investigation clause referenced therein that failure to do so would not relieve a contractor from its obligations under the contract. Further, Instructions to Bidders paragraph 2, "Conditions Affecting the Work," states that:

Bidders should visit the site and take such other steps as may be reasonably necessary to ascertain the nature and location of the work, and the general and local conditions which can affect the work or the cost thereof. Failure to do so will not relieve bidders from responsibility for estimating properly the difficulty or cost of successfully performing the work. * * *

This further confirms that the inspection is for the benefit of the bidder and not the Government. Moreover, the inspection is for the purpose of establishing the conditions under which the work is to be performed and not for the purpose of fixing the specifications. In that regard, paragraph 2 of the Instructions to Bidders states further:

* * * The Government will assume no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of the contract, unless included in the invitation for bids, the specifications, or related documents.

Thus, there was no obligation on the part of any bidder to perform beyond the specifications included in the IFB. Any understanding by Cayay that it would have a greater obligation under the contract than that set forth in the IFB because of representations that may have been made to it in that regard during site inspection is inconsistent with the specific obligation of bidders. Therefore, McMullan was under no different responsibility than Cayay because of its failure to make an investigation after the IFB was issued.

B-178303

As we stated in 39 Comp. Gen. 595, 597 (1960), the automatic rejection of a bid because of a failure to conform to a purely technical or overliteral reading of the stated requirements may be as arbitrary as a waiver of nonresponsiveness to a material and substantial requirement.

You have contended that the contracting officer awarded the contract notwithstanding the protest in violation of ASPR 2-407.8(b)(3). However, a failure to comply with ASPR 2-407.8(b)(3) does not affect the legality of an award. B-168753, March 25, 1970. Therefore, since the award has been sustained, it is not necessary to consider whether it was proper to make the award while the protest was pending.

Consequently, the protest is denied.

Sincerely yours,

Paul G. Dazbling

Acting Comptroller General
of the United States