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DECISION



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

FILE: B-219500

DATE: August 13, 1985

MATTER OF: Industrial Structures, Inc.

DIGEST:

1. Fact that bid package did not include a form for listing subcontractors, nor highlight requirement for subcontractor listing, does not render improper an agency's rejection of bid for failure to include subcontractor listing required by IFB to prevent bid shopping.
2. A late modification of a bid may not be accepted if the bid as originally submitted is nonresponsive.
3. A nonresponsive bid may not be accepted even though it would result in monetary savings to the government since acceptance would be contrary to the maintenance of the integrity of the competitive bidding system.

Industrial Structures, Inc. (Industrial), protests the rejection of its low bid as nonresponsive under invitation for bids (IFB) No. STP-5-85, issued by the Immigration & Naturalization Service (INS) for renovation of a Service Staging Area, Broadview, Illinois. INS rejected Industrial's bid because it did not contain a list of the subcontractors Industrial intended to use to perform the work. Industrial protests that INS should have highlighted the subcontractor listing requirement in the IFB's Part I, Solicitation Provisions, and that the bid package should have provided a specific form for the subcontractor listing. We deny the protest.

The IFB contained a clause entitled, "Listing of Subcontractors," in Part II, Special Provisions. The clause stated, among other things, that "For each category on the list of subcontractors, which is included as part of the Bid, the Bidder shall enter either (1) the name and address of the individual or firm with whom the Bidder proposes to subcontract for performance of the category, or (2) the

Bidder's own name to indicate that the category will not be performed by subcontract." The clause further directed that "Failure to submit the list by the time set for bid opening shall cause the bid to be considered nonresponsive . . ." and that ". . . the successful Bidder (Contractor) shall not have the on-site work of any listed category or portion of category performed by any individual or firm other than those named in the Bid for performance thereof." Industrial did not submit a subcontractor list with its bid nor did it indicate that it intended to perform each required category of work itself.

Industrial contends that the subcontractor listing clause was buried in the 1-1/2-inch thick contract documents, and should have been highlighted in a notice to all bidders. Industrial points out that paragraph 19 in Part I, Solicitation Provisions, stated that bids must be submitted on forms furnished by the government, and notes that no specific form was provided for the listing of subcontractors.

While INS acknowledges that no specific form was provided for the subcontractor listing, it contends the requirement was neither minor nor hidden since the subcontractor listing clause was three pages long.

We have frequently upheld the rejection of bids for construction projects because of the failure to list subcontractors as required by the IFB to prevent bid shopping. (Bid shopping refers to the seeking after award by the prime contractor of lower price subcontractors than those originally considered in the prime contractor's bid). See 43 Comp. Gen. 206 (1963); James and Stritzke Construction Company, 54 Comp. Gen. 159 (1974), 74-2 C.P.D. ¶ 128; Piland Construction Company, Inc., B-183077, Apr. 25, 1975, 75-1 C.P.D. ¶ 262; Coronis Construction Company, et al., B-186733, Aug. 19, 1976, 76-2 C.P.D. ¶ 177. In a case with solicitation language similar to that here, where the IFB did not contain space for a subcontractor list, we held that the IFB's directions were very clear that a list had to be included, and that the contracting agency properly rejected as nonresponsive a bid which did not include the list. Lazos Construction Co., Inc., B-211966, Aug. 11, 1983, 83-2 C.P.D. ¶ 201.

Industrial cites the length of the IFB and argues that the requirement for the subcontractor listing could be easily overlooked. However, government solicitations and the resulting contracts are highly complex instruments which are required by law to contain numerous provisions and

clauses. Quillin & Associates, Inc., B-208021, July 30, 1982, 82-2 C.P.D. ¶ 98. The bidder bears the responsibility for preparing and submitting a proper, responsive bid. The Library Store, Ltd., B-213258, Feb. 9, 1984, 84-1 C.P.D. ¶ 162. Implicit in that responsibility is the duty of a potential bidder to examine carefully the solicitation documents which describe the requirement to be procured. Pluribus Products, Inc., B-201553, May 21, 1981, 81-1 C.P.D. ¶ 400. It is clear that if Industrial had carefully examined the IFB, it would have noted the requirement for a subcontractor list.

Industrial believes that its submission of the subcontractor list, in response to a request from INS after bid opening, should be accepted as a late modification of an otherwise successful bid which makes its terms more favorable to the government, in accordance with 48 C.F.R. § 14.304-1(d) (1984). However, a late modification of a bid may only be accepted if the bid as originally submitted is responsive. Siemens-Allis, Inc., B-218054, Feb. 8, 1985, 85-1 C.P.D. ¶ 169.

Industrial states that its bid represents a savings to the government of at least \$100,000. Although rejection of Industrial's bid may result in additional cost to the government on this procurement, we have consistently held that a nonresponsive bid may not be accepted, even though it would result in savings to the government, since such acceptance would compromise the integrity of the competitive bidding system. Eclipse Systems, Inc., B-216002, Mar. 4, 1985, 85-1 C.P.D. ¶ 267.

We note that Industrial requested of INS a list of bid submittals from those bidders considered to be responsive, and that INS withheld unit prices of other bidders from Industrial's copy of the agency report. The reason given by INS was so that Industrial would not gain a competitive advantage over other bidders if the project were resolicited. However, the bids were publicly opened and the unit prices are matters of public record and should have been released since bids may be inspected after opening. Federal Acquisition Regulation, 48 C.F.R. § 14.402-1(c) (1985); also see Competition in Contracting Act of 1984, Pub. L. 98-369, § 2741(a), 98 Stat. 1175, 1199-1203. Nonetheless, since the basis of Industrial's protest does not concern the unit prices of other bidders, it does not appear that Industrial has been prejudiced by INS's nondisclosure.

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The protest is denied.

for *Raymond E. Brown*
Harry R. Van Cleve
General Counsel