



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Sage Associates General Contractors, Inc.

File: B-235497

Date: August 15, 1989

DIGEST

Protest alleging nonresponsiveness of bid which failed to provide information concerning experience of bidder, as required by invitation for bids, is denied where information concerns bidder's responsibility and therefore may be furnished any time before award of contract.

DECISION

Sage Associates General Contractors, Inc., protests the award of a contract to any other bidder under invitation for bids (IFB) No. GS-04P-89-EX-C0056, issued by the General Services Administration for the renovation of the fifth floor of the John A. Campbell U.S. Courthouse in Mobile, Alabama. Sage, the second low bidder, contends that the bid of the first low bidder, Conerly Construction, Inc., is nonresponsive because Conerly did not submit information with its bid demonstrating its experience and expertise in performing asbestos abatement work. GSA contends that the required information is a matter of responsibility which Conerly has provided after bid opening.

We deny the protest.

The IFB contemplated the award of a fixed price construction contract for building renovation services, including asbestos abatement. Bidders were instructed to supply the following information with their bids:

1. Names and locations of all prior asbestos abatement projects performed by the offeror.
2. Copy of the daily log and air monitoring reports, including final decontamination levels, of last five asbestos abatement projects.

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3. Names and experience of the superintendent, foreman and other workers to be assigned to the asbestos abatement project.

Sage argues that Conerly's failure to submit this information with its bid rendered the bid nonresponsive and that GSA improperly allowed Conerly to supply this information after bid opening. GSA contends that this information concerns the bidder's responsibility and thus can be supplied at any time prior to award. We agree with the agency.

Responsiveness concerns whether a bidder has unequivocally offered to perform services in conformity with all material terms and conditions of a solicitation. The ARO Corp., B-225727, June 15, 1987, 87-1 CPD ¶ 595. We have examined Conerly's bid and find nothing that takes exception to any of the IFB requirements. By completing the bid schedule and signing the bid, Conerly obligated itself to furnish the services in conformance with the specification and qualification requirements. Conerly's failure to provide the requested information with its bid did not eliminate or reduce this obligation, and thus the bid is responsive.

Responsibility, on the other hand, refers to a bidder's apparent ability and capacity to perform all contract requirements and is determined not at bid opening but at any time prior to award based on any information received by the agency up to that time. Great Lakes Dredge & Dock Co., B-221768, May 8, 1986, 86-1 CPD ¶ 444. The requested information concerns the prior experience and expertise of the contractor in performing asbestos abatement work and is needed to determine the contractor's capability to perform the contract work. This is a matter of a bidder's responsibility. See Federal Acquisition Regulation § 9.104-1 (FAC 84-18).

Sage argues that the IFB's mandatory language, requiring each bidder to submit with its bid the information regarding its asbestos abatement experience, made this requirement a matter of responsiveness. However, a requirement which relates to responsibility cannot be converted into a matter of responsiveness merely by the terms of the solicitation. Norfolk Dredging Co., B-229572.2, Jan. 22, 1988, 88-1 CPD ¶ 62. Since this information relates to responsibility, Conerly's failure to submit the information with its bid had

no bearing on the responsiveness of the bid. Rather, Conerly's bid is acceptable so long as the procuring agency is able to affirmatively determine Conerly's responsibility prior to award.

The protest is denied.

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for James F. Hinchman
General Counsel