

B. Britner
1455851



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Apersey Construction

File: B-245851

Date: January 8, 1992

Michael W. Adler for the protester,
Donald R. Jayne, Esq., and Michele M. Feher, Esq., General
Services Administration, for the agency,
Paul Britner, Esq., Office of the General Counsel, GAO,
participated in the preparation of this decision.

DIGEST

Protest is denied where record fails to support protester's allegation that low bid was nonresponsive for failure to satisfy subcontractor listing requirement, and, in any event, subcontractor listing requirement should not have been included in the solicitation.

DECISION

Apersey Construction (Apersey) protests the award of a contract by the General Services Administration (GSA) to S.J. Amoroso Construction Company (Amoroso) under invitation for bids (IFB) number GS-09P-91-KTC-0113/CR to construct tenant improvements to the Phillip Burton Federal Building in San Francisco, California. Apersey contends that Amoroso's bid was nonresponsive because it failed to include required subcontractor listings and other information.

The protest is dismissed in part and denied in part.

GSA received six bids in response to the solicitation. The apparent low bidder was Dillingham Construction Company, followed by Amoroso and then Apersey. Apersey submitted an agency-level protest challenging the responsiveness of the low and second low bids based on the alleged failure to include a complete subcontractor listing. Apersey also challenged other irregularities in Amoroso's bid. Subsequently, Dillingham withdrew its bid.

GSA waived the irregularities in Amoroso's bid pursuant to Federal Acquisition Regulation (FAR) § 14.405, and denied Apersey's protest on the subcontractor issue. Apersey then filed the instant protest. The agency made a determination that urgent and compelling circumstances existed requiring

that the award be made despite the pending protest and awarded the contract to Amoroso on October 17, 1991.

The solicitation, as amended, required bidders to provide a subcontractor listing for all subcontracts over \$100,000, and stated that failure to provide this information would render bids nonresponsive. Apersey contends that Amoroso's bid was nonresponsive because it failed to list subcontractors for carpeting and asbestos work.¹

GSA contends that Amoroso's bid was responsive to the subcontractor listing requirement. Further, GSA states that this requirement should not have been included in the solicitation.

With respect to responsiveness, GSA points out that the solicitation did not specify any particular format for the subcontractor listing. It states that Amoroso drew a line through the trades dealing with the carpeting and asbestos work and initialed the deletions, thereby indicating that subcontractor listings were not required for this work either because the amount was under \$100,000 or because Amoroso would not be subcontracting the work. By letter dated September 4, 1991, Amoroso specifically confirmed that it had listed all required subcontractors, and that subcontracts for the carpeting and asbestos work would not exceed \$100,000. Thus, GSA maintains that Amoroso fully complied with the subcontractor listing requirement.

In its comments on GSA's report, Apersey states that those bidders who listed an asbestos subcontractor identified a firm that, according to Apersey, will charge in excess of \$200,000. Therefore, Apersey alleges that Amoroso's statement that it can subcontract the asbestos work for less than \$100,000 is not believable.

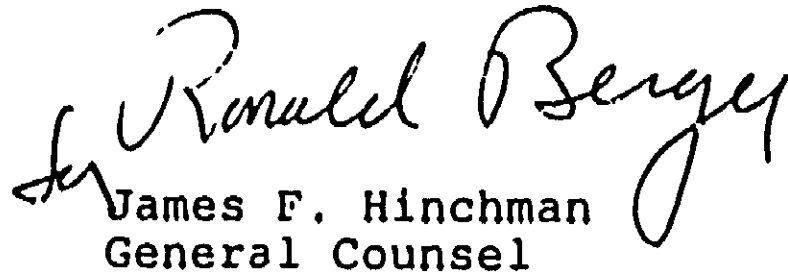
We do not consider Apersey's assertion to be sufficient to establish that Amoroso's bid was nonresponsive. Rather, we find that Amoroso's deletion of two trades from the subcontracting list accompanied by the bidder's initials satisfied the bid requirements. The IFB did not require bidders to list subcontractors for every trade. A plain reading of Amoroso's bid clearly shows which subcontractors Amoroso

¹Apersey's protest also alleges that "other bid requirements were not met by Amoroso, thus giving Amoroso a clear economic advantage." However, Apersey does not elaborate on this allegation, or provide any legal or factual grounds to support it. Therefore, this aspect of the protest is dismissed. 4 C.F.R. § 21.1(c)(4) (1991); Grant's Janitorial and Food Service, Inc., B-244170.3, Sept. 26, 1991, 91-2 CPD ¶ 296.

determined were required to be listed and which ones were not. As noted above, nothing more was required.

Apart from the responsiveness issue, GSA points out that since it formally discontinued use of the subcontractor listing requirement in 1984, the contracting officer lacked authority to include such a requirement. As a result, GSA contends that the solicitation was defective in this respect, although the defect was not prejudicial to any bidder. Apersey does not dispute GSA's assertions in this regard. Therefore, the protest would lack merit even had Amoroso not been responsive to the subcontractor listing requirement. See Kenny Grisham & Associates, B-234303, May 16, 1989, 89-1 CPD ¶ 465.

Accordingly, the protest is denied.


James F. Hinchman
General Counsel