



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: J & J Maintenance, Inc.

File: B-250110

Date: January 8, 1993

Donald E. Barnhill, Esq., East & Barnhill, for the protester.
Richard B. Funk, Bradley Construction Co., Inc., an interested party.
W. Graham Moses, Esq., Department of Housing and Urban Development, for the agency.
Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency improperly failed to obtain a signed receipt for a bid which was returned to bidder before bid opening and subsequently timely resubmitted after modification by the bidder is denied, since provision requiring agency to obtain receipt is designed to protect the government and bidders against the possibility of an unauthorized withdrawal of a bid and has no application where the bid is merely returned for purposes of making timely prebid opening modifications.
2. Speculation that agency contracting officials improperly permitted apparent low bidder to modify bid after bid opening is denied where agency denies that modification was permitted and there is no evidence showing that late modification in fact was permitted.
3. Omission in cost breakdown document provided to agency after bid opening for purposes of price reasonableness review does not affect responsiveness of bid; information was not required to be submitted as part of bid and did not affect firm's unequivocal offer to meet all solicitation requirements.

DECISION

J&J Maintenance, Inc. protests the award of a contract to Bradley Construction Company, Inc. under invitation for bids (IFB) No. 015-92-063, issued by the Department of Housing and Urban Development (HUD) to acquire construction services for the modernization of a number of apartment buildings

owned by HUD in Fort Meyers, Florida. J&J principally argues that Bradley improperly was allowed to (1) change its bid prior to bid opening, and (2) revise its bid after bid opening to provide prices for line items which had been left blank.

We deny the protest.

The IFB called for the submission of fixed-price bids to perform renovation and construction on six apartment buildings owned by HUD. Bidders were required to submit a lump-sum price for each of the buildings and also a lump-sum price for the construction of a laundry facility. In addition, the solicitation required bidders to provide unit prices for various aspects of the construction (for example, the square-foot, and per-building cost of installing flooring) so that HUD could use these prices as the basis for calculating change orders during performance of the contract. Bid opening was scheduled for 3 p.m. on August 18, 1992.

On the day of bid opening, representatives of Bradley and J&J arrived at the designated HUD facility approximately 1 hour before the scheduled closing time, and Bradley submitted its bid package at that time. Thereafter, at about 2:30 p.m., Bradley's representative requested that its bid package be returned to her, apparently to fill in or change portions of the firm's bid. The agency's contracting official returned the Bradley bid package to the firm's representative, and approximately 25 minutes later Bradley's representative resubmitted the bid package, which was time-stamped at 2:53 p.m.

At 3 p.m., HUD's bid opening official announced that the closing time for the submission of bids had arrived. She proceeded to open and read the four bids that had been received and announced that Bradley was the apparent low bidder. The official then called the Bradley representative to the bid opening table to provide her with a HUD form 2530, "Previous Participation Certification," which was to be filled out by Bradley company officials. After being provided with the form, Bradley's representative asked to see the firm's bid, briefly examined it, returned it to the HUD bid opening official and departed. After the Bradley representative had departed, J&J's representative asked to examine the bid. His request was denied by the bid opening official. J&J's representative then telephoned his offices to inform company officials that he had been refused an opportunity to examine the Bradley bid. Shortly thereafter, an individual from J&J called the contracting office and requested that J&J's representative be allowed to examine the Bradley bid; he was then permitted to do so.

J&J first argues that Bradley did not properly withdraw its bid prior to bid opening because the agency's contracting official did not obtain a signed receipt for the bid package when she returned it to Bradley's representative. J&J maintains that, as a consequence, any changes made to the Bradley bid after it was initially submitted cannot be considered. The protester therefore contends that the Bradley bid as initially submitted is the only bid which HUD could properly consider. Since J&J also speculates that Bradley's initial bid contained line items for which prices had not been entered, J&J concludes that Bradley's bid was nonresponsive and could not be accepted for award.

This argument is without merit. Federal Acquisition Regulation (FAR) § 14.303(b) provides that a bid may be withdrawn in person by a bidder or its representative if, before the time set for the receipt of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid. This provision is evidently intended to protect the government and bidders from unauthorized withdrawal of their own bids from consideration for award; we are aware of no reason why failure of the government to obtain a signed receipt would invalidate the bid of a firm that retrieved its bid package for purposes of modifying its bid. See L.A. Easterling Co., Inc., B-180295, Mar. 29, 1974, 74-1 CPD ¶ 157. The record is clear that an authorized Bradley representative obtained the bid package to modify the bid and, in our view, the agency's failure to obtain a signed receipt for the bid is immaterial. Bradley resubmitted its bid prior to the deadline, and was not afforded an improper advantage by, for example, being allowed to tender a late bid.

J&J also argues that Bradley improperly was permitted to revise its bid after bid opening. J&J maintains that the Bradley bid was nonresponsive at the time of bid opening because it did not contain prices for two of the IFB's line items, and alleges further that Bradley was allowed to fill in the line items after the bids were read. In support of its allegation, J&J has submitted affidavits from its representatives who attended the bid opening. The affiants make certain representations concerning statements allegedly made by Bradley's representative regarding her failure to fill out all of the line items contained in the solicitation. In

¹J&J also argues that HUD erred by not following the FAR procedures for obtaining verification of the Bradley bid since it contained missing line item prices. This allegation, however, presupposes that there was an omission in the Bradley bid. Since we conclude that the Bradley bid was responsive as submitted, HUD was not required to follow the FAR procedures relating to bid verification.

addition, the affidavits state that there was a period of time during which the Bradley representative and HUD's bid opening official were alone in the bid room. J&J's representatives speculate that Bradley's representative was permitted to complete the firm's bid during that time.

HUD's bid opening official and the Bradley representative have also furnished affidavits. In both of these affidavits, the parties state that all items were filled out on the Bradley bid before it was timely submitted and that the Bradley representative was not permitted to revise the firm's bid after bid opening.

The record here does not support J&J's position. The firm's representatives' affidavits only speculate that Bradley was permitted to revise its bid after bid opening. These affidavits do not state that the representatives observed that the Bradley bid was incomplete prior to bid opening or that the Bradley representative was observed making revisions to the bid after bid opening. None of the statements allegedly made by the Bradley representative (as outlined in J&J's affidavits) is otherwise corroborated by evidence in the record.

In contrast, the affidavits of the Bradley representative and the bid opening official unequivocally represent that no changes were made to the Bradley bid after bid opening. Moreover, the bid opening official's affidavit describes a different course of events after the bid opening. According to her affidavit, the Bradley representative left the bid opening room before the J&J representative approached the bid table. This version of the events is corroborated by additional statements from other HUD officials who all state that the Bradley representative approached the bid table immediately after bid opening, obtained the HUD form 2530, briefly examined the firm's bid and left. This description of the events, as related by numerous HUD officials, suggests that there was not even an opportunity for the Bradley representative and the bid opening official to have been alone. We conclude that the record as a whole supports HUD's account; it does not support J&J's speculation that Bradley was permitted to change its bid after opening.² See Oktel, B-244956; B-244956.2, Dec. 4, 1991, 91-2 CPD ¶ 512.

Finally, J&J argues that the record contains additional evidence that the Bradley bid was nonresponsive. J&J directs our attention to a September 1, 1992, letter in which HUD requested additional information from Bradley

²We point out that this situation could have been avoided had HUD permitted J&J to inspect Bradley's bid following the opening, as generally provided for under FAR § 14.402-1.

regarding cost breakdown data which the firm had furnished to the agency. This allegation is based upon a misunderstanding on the part of the protester regarding the meaning of the September 1 letter. The record shows that on August 20, after bid opening, Bradley furnished cost breakdown information to the agency for purposes of enabling HUD to make a determination as to Bradley's price reasonableness. HUD's September 1 letter made inquiries concerning the data which had been furnished on August 20, including one area which the firm had stated was not a cost item. Bradley's failure to furnish this information on August 20 could not have affected the responsiveness of the firm's bid because the cost breakdown was not required under the price schedule or any other portion of the IFB and, indeed, was not furnished as part of the firm's bid. See Tri-Servs., Inc., B-245698, Jan. 15, 1992, 92-1 CPD ¶ 75. The inadequacy of the cost breakdown information thus had no effect on the responsiveness of Bradley's bid.

The protest is denied.


James F. Hinchman
General Counsel