



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Gravely & Rodriguez

File: B-256506

Date: March 28, 1994

D. Lee Roberts, Jr., Esq., Smith, Currie & Hancock, for the protester.

Michael D. Weaver, Esq., Department of Housing and Urban Development, for the agency.

Christine F. Davis, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

A protester that was not the named bidder, but was a different legal entity who assumed the bid after bid opening, is not eligible for award and does not qualify as an interested party under the Bid Protest Regulations to protest the rejection of the named bidder's bid for another reason.

DECISION

Gravely & Rodriguez protests the award of a contract to any bidder other than itself under invitation for bids (IFB) No. H06S930078000, issued by the Department of Housing and Urban Development (HUD), for foreclosure services for HUD's Single Family Loan Management Branch, Lubbock, Texas.

We dismiss the protest.

The IFB requested bids by December 13, 1993. On that date, a signed bid was submitted by Mr. Marc Gravely, Esq. In Section K of the bid, "Representations, Certifications, and Other Statements of Bidders," Mr. Gravely certified his legal status as a sole proprietorship and did not disclose that he had a contingent fee arrangement.

Mr. Gravely was the apparent low bidder, and the contracting officer commenced a pre-award survey to determine his eligibility for award. During the pre-award survey, the contracting officer asked Mr. Gravely to correct certain omissions in section K of his bid and to furnish a Standard Form (SF) 119 addressing a possible violation of the covenant against contingent fees. See Federal Acquisition Regulation (FAR) § 52.203-4. The agency received a response on January 31, 1994. The response was submitted in the name

of "Gravely & Rodriguez," and Section K was revised to certify the bidder's legal status as a partnership.

On February 9, the contracting officer notified Mr. Gravely, that his bid was rejected because he did not submit the requested SF 119 during the pre-award survey. FAR §§ 3.407, 3.409. Gravely & Rodriguez, the partnership, protested this determination to our Office on February 18.

The agency requests that we dismiss this protest because Gravely & Rodriguez was not the bidder named in the original bid, but a substitute bidder named during the pre-award survey. The agency argues that such a substitution is improper and may not result in an award to Gravely & Rodriguez, regardless of the resolution of this protest. The agency therefore contends that Gravely & Rodriguez lacks the status of an interested party eligible to pursue the protest.

The protester responds that, "Gravely & Rodriguez . . . is eligible to receive an award of the contract and . . . is an interested party for the purpose of filing a protest." The protester, citing our decision in Harper Enters., B-179026, Jan. 25, 1974, 74-1 CPD ¶ 31, argues that the partnership was formed for the limited purpose of performing this contract, and that an award to the partnership, rather than the individual who submitted the bid, is appropriate because "[e]ach member of a partnership remains fully, jointly and severally liable to the government for the full performance of the contract."

Once an individual submits a bid in his own name, he cannot change the bid after bid opening to substitute another entity as the real party in interest. KB Indus.--Recon., B-244120.2, June 14, 1991, 91-1 CPD ¶ 570. A contract cannot be awarded to any entity other than that which submitted the bid, and an offer from an entity which seeks the opportunity to substitute itself for the bidding entity must be rejected. Id.; Martin Co., B-178540, May 8, 1974, 74-1 CPD ¶ 234.

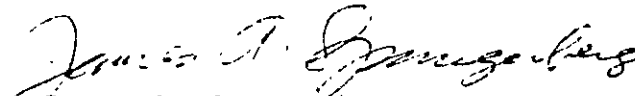
In our view, Harper Enters. is consistent with this general rule and does not support the protester's attempt to substitute itself as the bidding entity. In that case, Harper, the apparent low bidder, was denied a certificate of competency (COC) by the Small Business Administration (SBA). During the COC procedure, Harper entered a joint venture with a firm that agreed to provide a revolving line of credit during Harper's performance of the contract. Although the SBA stated that Harper could possibly perform the contract with the financial backing of the joint venturer, the SBA declined to consider the joint venture agreement because of its alleged impact on Harper's

responsiveness. We found that the SBA could not properly ignore the joint venture agreement in determining Harper's responsibility because the terms of the agreement were not "such that the bidding entity no longer exists, and the bid is effectively transferred to a nonbidding entity." In other words, the joint venture was not proposing to perform the contract, which would have been improper, but was proposing to furnish financial assistance to the named bidder, which would be bound to perform the contract.

Here, on the other hand, the protester admits that the partnership, not the individual named in the bid, is now proposed to perform the contract. This is precisely the type of substitution that was considered improper in Harper Enters., amounting to a transfer of Mr. Gravely's bid to a nonbidding entity, Gravely & Rodriguez, for the performance of the contract.

Accordingly, Gravely & Rodriguez is ineligible for the award of this contract, regardless of the resolution of its protest, and thus does not qualify as an interested party under our Bid Protest Regulations, to protest the rejection of Mr. Gravely's bid. 4 C.F.R. § 21.0(a).

The protest is dismissed.


James A. Spangenberg
Assistant General Counsel