



Comptroller General
of the United States

113467

Washington, D.C. 20548

Decision

Matter of: Caldwell & Santmyer, Inc.

File: B-260628

Date: July 3, 1995

Louis J. Kozlakowski, Jr., Esq., Blum, Yumkas, Mailman, Gutman & Denick, P.A., for the protester.
Diane D. Hayden, Esq., and Lynn J. Bush, Esq., Department of the Navy, for the agency.
Adam Vodraska, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Bid which is ambiguous with respect to the identity of the bidding entity is nonresponsive.

DECISION

Caldwell & Santmyer, Inc. protests the rejection of a bid by the Naval Facilities Engineering Command under invitation for bids (IFB) No. N62477-93-B-0307, for the demolition of an existing building and construction of a dormitory at Andrews Air Force Base, Maryland.

We deny the protest.

The protester's bid identified the nominal bidder as "Thomas P. Caldwell" in block 14 (name and address of offeror) of the standard form (SF) 1442 (solicitation, offer and award). On this same page, Thomas P. Caldwell signed the bid as Secretary/Treasurer. On the other pages of the bid, e.g., the Certificate of Procurement Integrity, "Caldwell & Santmyer, Inc." is indicated to be the nominal bidder. The bid represents the bidding entity as a Virginia corporation (which Caldwell & Santmyer, Inc. is) and includes the Taxpayer Identification Number (TIN) of Caldwell & Santmyer, Inc. The accompanying bid bond designates Caldwell & Santmyer, Inc. as the principal.

The Navy rejected the protester's bid as nonresponsive because of the discrepancy between the nominal bidder and the principal on the bid bond, and made award to the next low bidder. The protester contends that it is clear from the bid documentation that the actual bidder is Caldwell &

Santmyer, Inc., and that its entry of Thomas P. Caldwell as the bidder on the SF 1442 was a waivable clerical error.

A contract cannot be awarded to any entity other than the one which submitted the bid. 41 Comp. Gen. 61 (1961); Mark II, Inc., B-203694, Feb. 8, 1982, 82-1 CPD ¶ 104. Uncertainty as to the identity of the bidder is a circumstance that renders a bid nonresponsive, since ambiguity as to the offeror's identity could result in there being no party that is bound to perform the obligations of the contract. Sunrise Int'l Group, Inc.; Eagle III Knoxville, Inc., B-252735; B-252735.2, July 27, 1993, 93-2 CPD ¶ 58. Although the name of the bidding entity need not be exactly the same in all of the bid documents, the bid materials or other information reasonably available must show that the differently identified entities are in fact exactly the same concern. Jack B. Imperiale Fence Co., Inc., B-203261, Oct. 26, 1981, 81-2 CPD ¶ 339; see Goss Fire Protection, Inc., B-253036, Aug. 13, 1993, 93-2 CPD ¶ 97 (different name on bid bond).

Here, on the one hand, the bid could reasonably be considered a bid from Thomas P. Caldwell since that is the name of the bidder identified in the appropriate blank on the face of the bid. On the other hand, the other information contained in the bid identifies Caldwell & Santmyer, Inc. as the bidder. While it appears likely that Caldwell & Santmyer, Inc. was intended to be the nominal bidder, given that the bid indicates that the bidding entity is a Virginia corporation with Caldwell & Santmyer, Inc.'s TIN, the fact remains that two different legal entities, Thomas P. Caldwell and Caldwell & Santmyer, Inc., are identified as the nominal bidder in the bid, so that the contracting officer had reason to be uncertain as to who was the actual bidder. See Sunrise Int'l Group, Inc.; Eagle III Knoxville, Inc., supra; The Scotsman Group, Inc., B-245634, Jan. 13, 1992, 92-1 CPD ¶ 57. It is the bidder's responsibility to prepare its bid properly so as to ensure that the contracting officer is able to accept the bid in full confidence that an enforceable contract will result. Id.

As noted by the protester, in certain cases, we have found bids to be responsive, even though they designated the intended bidder by different names. See, e.g., Coonrod & Assoc., 67 Comp. Gen. 117 (1987), 87-2 CPD ¶ 549; Best Western Conference Center, B-255425, Feb. 28, 1994, 94-1 CPD ¶ 156; Sunrise Int'l Group, Inc., B-251956, Feb. 8, 1993, 93-1 CPD ¶ 114; Mark II, Inc., supra; Jack B. Imperiale Fence Co., supra; Protectors, Inc., B-194446, Aug. 17, 1979, 79-2 CPD ¶ 128 (a bid that designates as the bidder a recognized trade name or an alternate name of a corporation is sufficient to bind the corporation as the bidder).

However, where, as here, more than one legal entity--Thomas P. Caldwell and Caldwell & Santmyer, Inc.--are designated in the bid as the potential nominal bidder, there is insufficient certainty as to the identity of the actual bidder to be bound by the bid to allow it to be considered responsive. Sunrise Int'l Group, Inc.; Eagle III Knoxville, Inc., supra; Syllor Inc. and Ease Chemical, B-234723; B-234724, June 6, 1989, 89-1 CPD ¶ 530; Future Elec. Co., B-212938, Feb. 22, 1984, 84-1 CPD 216; Ebsco Interiors, B-205526, Aug. 16, 1982, 82-2 CPD ¶ 130. Thus, the agency's rejection of the protester's bid as nonresponsive is not legally objectionable.

The protest is denied.


for Robert P. Murphy
General Counsel