

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-184988

DATE: January 29, 1976

MATTER OF: Sunroc Corporation

## DIGEST:

1. Failure to indicate in bid whether bidder was owned or controlled by a parent corporation is a minor informality which is waivable under FPR § 1-2.405 and does not render bid nonresponsive.
2. Failure to complete and submit with bid form providing information regarding bidder status as small business surplus labor area concern is waivable under FPR § 1-2.405 as requirement does not concern bid responsiveness but rather order of priority in negotiations with small business bidders; moreover, information was provided elsewhere in bid.
3. Protest must be considered as timely where facts indicate probability that protest was received timely by contracting activity.

The Sunroc Corporation (Sunroc) protests any award to the Elkay Manufacturing Company (Elkay) under the small business set-aside portion of General Services Administration (GSA) invitation for bids No. FPG-A-FH-55613-A-7-16-75. Award is being withheld pending our decision.

We must first consider the argument of Elkay's counsel that the protest is untimely under our Bid Protest Procedures since bid opening was July 16, 1975, and because the protest letter was dated July 24, it obviously was received by GSA at a later date, a period of more than 5 days after the matters protested became public knowledge. Our Bid Protest Procedures, however, in effect at the time of bid opening (40 Fed. Reg. 17979 (1975)) allow a period of up to 10 working days after the basis of the protest becomes known in which to file the protest. Since July 24 was only 6 working days after bid opening, and since GSA has not indicated that the protest was untimely received we must presume that the protest was received by GSA in a timely fashion. Consequently, we will consider the merits of the protest.

Sunroc believes the Elkay bid to be nonresponsive for two reasons: first, because Elkay did not check a block in paragraph 5 of the invitation Standard Form 33 to indicate whether that company was owned or controlled by a parent corporation; and second, because Elkay did not complete and return with its bid the form entitled Notice of Partial Small Business Set-Aside (GSA Form 1773), as was required by that form.

We are of the opinion, for the reasons that follow, that the Elkay bid was responsive to the invitation and that these omissions on its part may be properly waived as minor informalities or irregularities under section 1-2.405 of the Federal Procurement Regulations (1964 ed.), which defines a minor informality or irregularity as:

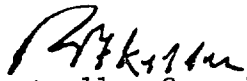
"\* \* \* one which is merely a matter of form and not of substance or pertains to some immaterial or inconsequential defect or variation of a bid from the exact requirement of the invitation for bids, the correction or waiver of which would not be prejudicial to other bidders. The defect or variation in the bid is immaterial and inconsequential when its significance as to price, quantity, quality, or delivery is trivial or negligible when contrasted with the total cost of the supplies or services being procured. \* \* \*"

As regards the first contention of Sunroc, we have previously held that the failure to provide with the bid information contained in paragraph 5, "AFFILIATION AND IDENTIFYING DATA," is to be considered as a minor informality and not as a matter which would render a bid nonresponsive. Edward E. Davis Contracting, Inc., B-182484, January 29, 1975, 75-1 CPD 64; Kleen-Rite Janitorial Service, Inc., B-179652, January 18, 1974, 74-1 CPD 15.

Concerning Elkay's failure to complete and include with its bid GSA Form 1773, we note first that this form does not state that such a failure will render a bid nonresponsive. Rather it states in the "NOTE TO BIDDER" that "To be considered for an award as a small business labor surplus area concern, the bidder must enter the information called for \* \* \* and return the form with his bid." The information desired was the identity of the geographical areas in which the bidder "proposes to perform, or cause to be performed, a

substantial portion of the production of the contract." This information was not determinative of whether or not a bid would be rejected as nonresponsive but rather of the order of priority in negotiations with small business bidders. In any event, the information called for on the form was furnished elsewhere in the bid submitted by Elkay. As regarded production by the bidder, the form required the name of the plant (if different from the bidder), its address (point of production), and the geographical area of its location. Concerning production by its first-tier subcontractors, the form required the name of the first-tier subcontractor, the point of production (address of the plant), and the geographical area of its location. Elkay identified itself in its bid as a small business, a fact confirmed by the Small Business Administration, and on page 7 of its bid noted that the point of production would be Cascade Products, St. Charles, Illinois, Kane County. Thus it may be seen that all the information necessary for a determination as to whether Elkay might be considered a small business labor surplus area concern was already contained in its bid. The filling out of GSA Form 1773 would have been to all intents and purposes merely repetitive. In view of this, we must conclude that the failure to furnish that information called for in the specified form is an immaterial variation from the exact requirements of the invitation and is, therefore, waivable by the contracting officer. B-163309, January 31, 1968.

Accordingly, the protest is denied.

  
Deputy Comptroller General  
of the United States