

DOCUMENT RESUME

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[Protest against the Award of a Contract for Construction of a Retrofuel Facility Steam Plant]. B-188471. August 8, 1977. 5 pp.

Decision re: Inseco, Inc.; by Robert P. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900) -  
Contact: Office of the General Counsel; Procurement Law II.  
Budget Function: General Government; Other General Government (806) -

Organization Concerned: Centric Corp.; General Services Administration.

Authority: B-181250 (1974). B-185792 (1976). B-179947 (1974) 54  
Comp. Gen. 66. 41 C.F.R. 5B-2.202-70(a).

The protester objected to the award of a construction contract on the basis that the low bidder's proposal should have been rejected because it contained irregularities. The awardee's bid complied with the spirit and purpose of the solicitation in listing subcontractors. It is the agency's responsibility to determine the responsibility of subcontractors. The prime contractor may list a wholly owned subsidiary if the record indicates that the subsidiary is not being used to disguise bid shopping through sub-subcontractors. Where the solicitation required a subcontractor listing for a work category which should have been omitted, failure to list the proposed subcontractor may be waived. (Author/SC)

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**DECISION**



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

Roger Ayer  
Proc. II

**FILE: 3-188471**

**DATE: August 8, 1977**

**MATTER OF: Inseco, Inc.**

**DIGEST:**

1. Bidder who listed subcontractor which will install, but not sub-subcontractor which will manufacture, complies with spirit and purpose of IFB listing requirement since subcontractor listed will perform substantial portion of work.
2. Where IFB sets out responsibility criteria applicable to certain categories of work, agency as matter of contract administration should insure that criteria are met whether by prime or first or lower tier subcontractor.
3. Prime contractor may, in response to subcontractor listing requirement, properly list wholly owned subsidiary if record indicates subsidiary is not mere "dummy" or "pass through" being used to disguise bid shopping through sub-subcontractors.
4. Where IFB requiring subcontractor listing, erroneously includes work category which under regulations should be omitted because it constitutes less than three and one-half percent of total estimated contract price, failure to list proposed subcontractor may be waived.

Inseco, Inc. (Inseco) protests the award of a contract to Centric Corporation (Centric) for the construction of the re-fuel facility steam plant at Building 47, Denver Federal Center, Denver, Colorado, under Project No. I-CO-75-507 the invitation for bids (IFB) for which was issued by the General Services Administration (GSA) on December 27, 1976. The IFB required that each bid submitted be accompanied by a list of subcontractors with whom the bidder proposed to subcontract for performance of the categories of work specified on the Supplement to Bid Form entitled "List of Subcontractors." Six bids were received and opened on February 10, 1977. Centric was the low bidder while Inseco was the second low bidder.

Inseco's protest to our Office was received on February 25, 1977. We have been advised by GSA that award was made to Centric on April 13, 1977, notwithstanding the protest because it was unlikely that Centric would be able, due to supplier price increases, to extend its bid beyond April 26, 1977.

B-188471

Inseco argues that the Centric bid should have been rejected on three grounds:

"1. The bid submitted contains irregularities and is nonresponsive because it fails to designate the actual subcontractors for the baghouse, the structural steel and the boiler controls as required by the Special Conditions.

"2. Process Piping, Inc., which is listed as the subcontractor for those sections is not a specialist and does not meet the requirements of the Special Conditions and is therefore not a responsible contractor.

"3. The designation of Process Piping, Inc., a wholly owned subsidiary of the bidder, rather than qualified subcontractors violates the integrity of the bidding process in that it would allow the bidder to shop or auction the subcontracts after bid opening, an advantage that is not available to the bidders who have complied with the Special Conditions."

Inseco questions whether PPI is a specialist subcontractor having the requisite experience called for in the I/B or merely another manifestation of Centric. If the latter, Inseco argues that Centric has, through the use of the PPI "dummy", managed to reserve to itself the option of bidshopping for truly qualified subcontractors at a later date.

Inseco cites, with emphasis, the following section of the solicitation in support of its argument that PPI is not qualified:

"6.1.2 Experience. The baghouse design shall not include any features or concepts of an experimental nature. The baghouse shall be the product of a manufacturer who is regularly engaged in the production of baghouse filtration equipment of the approximate size specified herein, whose standard catalog list data on such units, and who has had relevant experience and operational baghouse installations as ultimately described below, which shall be regarded as absolute minimums; \* \* \*" (Emphasis added.)

"2.4 The boiler controls shall be the product of a specialist who is a combustion control manufacturer regularly engaged in the engineering, manufacturing,

B-188471

and commissioning of electric and electronic automatic boiler combustion control systems for firing solid, liquid and gaseous fuels, and who has manufactured the controls and supervised installation on at least three other projects of this type and complexity within the past three years. All components of the combustion control systems, programmed oxygen controls, and the control panel for coal firing, shall be the products of that one specialist manufacturer wherever possible." (Emphasis added.)

GSA notes that the solicitation only required Centric to list the firm with which it intended to subcontract; there was no requirement to list lower tier subcontractors. GSA takes the position that Centric intended to subcontract for installation of both the baghouse and the boiler controls with PPI who in turn would contract with the manufacturers for the required equipment. Citing our decision in Edgemont Construction Company, B-181250, August 28, 1974, 74-2 CPD 129, GSA urges that such a chain of transactions would result in the actual equipment manufacturer having the status of a lower tier subcontractor which need not be listed so long as the subcontractor named will perform a substantial portion of the work. GSA points out that PPI's installation work comprises one-third of the dollar value of the baghouse work and one-half the dollar value of the boiler control work. GSA further observes that where the manufacturer is not the subcontractor it is the agency's task in the process of contract administration to insure that the manufacturer meets the required standards.

We look upon the subcontractor listing and the specialized experience as separate. We see nothing to indicate that the stipulated experience requirements with respect to the baghouse and boiler controls must be met by the listed subcontractor.

The IFB required the listing of first tier subcontractors for the indicated categories of work. The purpose of the requirement is to prevent bidshopping by the successful prime contractor among the potential subcontractors. Therefore, we have held that the requirement is not satisfied by listing a "dummy" thus leaving the prime free in effect to bid shop despite the listing. Edgemont, supra. However, while PPI produces neither baghouses nor boiler controls of the type involved, it is engaged in the business of installing them and will perform a substantial portion of the work. In support of PPI's status as a legitimate subcontractor GSA provided the following information which is undisputed by the protester:

"(1) PPI, a Colorado corporation, was formed in 1968 as a mechanical contracting company specializing in

B-188471

mechanical process equipment and systems with specific emphasis on pollution control projects; (2) PPI's president is also vice president of Centric but its vice president is neither an officer nor an employee of Centric; (3) PPI is signatory to numerous union agreements in Wyoming, Oklahoma, Utah and Colorado; (4) PPI has contractor's licenses in Wyoming, Oklahoma, Utah and Colorado and (5) numerous contracts ranging in amounts from approximately \$80,000 to \$2,000,000 have been awarded to PPI by firms other than Centric."

Accordingly, PPI could properly be listed as the subcontractor for the baghouse and boiler controls. See Edgemont, supra.

To be regarded as responsible, PPI would have to be found responsible based on the standards generally applicable to such determination and, in addition, would have to meet any specific experience requirements applicable to it. We find in the solicitation a special experience requirement for the boiler controls subcontractor as follows:

"2.5 The boiler controls subcontractor shall be experienced in the installation of automatic combination control systems of this type and complexity."

GSA points out that PPI, having "installed an automatic combustion control system on the Pueblo Army Depot, Stack Emission Control project, which involved the conversion of existing boilers to coal firing," meets the criterion. We find no basis to question the agency's determination in this respect. Moreover, we have taken the position that we will not review the contracting agency's affirmative determination of a proposed contractor's general responsibility barring fraud on the part of the contracting activity. Central Metal Products, Inc., 54 Comp. Gen. 66 (1974), 74-2 CPD 64. We think the same rule applies with respect to the general responsibility of subcontractors.

Based on the foregoing we conclude that Centric's listing of PPI was not violative of the integrity of the competitive bidding process.

With regard to the structural steel category of work where Centric listed itself, it is GSA's position that the category was inadvertently included in the LFB contrary to Section 5B-2.202-70(a) of GSA's procurement regulations, 41 C.F.R. 5B-2.202-70(a) (1976), which requires the listing of structural steel only if the work in that category comprises at least three and one-half percent of the estimated cost of the contract. GSA calculations show that the structural steel actually comprises only 2.77 percent of the total estimated contract cost. From

B-188471

this GSA concludes that Centric's failure to list a subcontractor constituted a minor deficiency which could be waived. In support of its conclusion GSA cites our decision in George E. Jensen, Contractor, Inc., B-185792, July 9, 1976, 76-2 CPD 27, where we concluded that a bidder's failure to list a subcontractor for a category estimated to cost less than three and one-half percent of the total estimated contract price is a minor bid deficiency which may be waived. We, therefore, see no reason to question Centric's listing of itself as the contractor for the structural steel work where even a total failure to list anything would not have resulted in a determination of nonresponsibility. See, Wickham Construction Company, Incorporated, B-179947, April 5, 1974, 74-1 CPD 173.

Accordingly, the protest is denied.

  
Deputy Comptroller General  
of the United States