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DECISION



R. Feldman PL II
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-190707

DATE: June 19, 1978

MATTER OF: Stauffer Construction Company, Inc.

DIGEST:

By listing itself or another firm for each category of work specified on subcontractor listing form, bidder submitted a responsive bid. Further IFB requirement that certain work listed on subcontractor listing form be performed by specialist provides no basis for agency's determination that bid was non-responsive where bidder completed subcontractor listing form. Matter referred to agency for further administrative action.

Stauffer Construction Company, Inc. (Stauffer) protests the rejection of its low bid by the General Services Administration (GSA) under Project IDC-61180 for the restoration and renovation of the Winder Building in Washington, D. C.

GSA sustained, in part, a protest by Grunley-Walsh Construction Company, Inc. (Grunley-Walsh), the second low bidder. GSA agreed with Grunley-Walsh that Stauffer's bid was nonresponsive to the IFB requirement that the fabrication and installation of wood door and gypsum plaster work be performed by specialists. The protester believes its bid was responsive and was improperly rejected and has requested contract termination and award to it or bid preparation costs for what it views to be GSA's arbitrary rejection of its bid.

The IFB required each bidder to furnish with its bid the name and address of the subcontractor which would perform each of certain specified categories of work. If a specified category was not to be performed by subcontract, as was Stauffer's intention as to the wood door and plaster work, the bidder was to list its own name for that category. If a category was to be

performed in part by the bidder and in part by another firm, the bidder was to describe the portion of work to be performed by each. "Subcontractor" was defined in the solicitation as any " * * * firm with whom the bidder proposes to enter into a subcontract for manufacturing, fabricating, installing or otherwise performing work under this contract * * *." If the bidder listed itself for a category such work had to be performed with personnel on its payroll.

Apart from the listing requirement the specification also required that certain categories of work be performed by specialists. The IFB defined a specialist as follows:

"12.1 The term 'specialist' as used in the specification shall mean an individual or firm of established reputation (or, if newly organized, whose personnel have previously established a reputation in the same field), which is regularly engaged in, and which maintains a regular force of workmen skilled in either (as applicable) manufacturing or fabricating items required by the contract, installing items required by the contract, or otherwise performing work required by the contract * * *."

The IFB form for listing subcontractors provided, in pertinent part:

"NOTE: The listing of an individual or firm (whether a subcontractor or the bidder) who does not meet the requirements of the 'Specialist' or 'Competency of bidders' clauses in the specifications, wherever applicable, may be grounds for rejection of bid."

Stauffer represented in its bid that it would perform the wood door and plaster work categories without subcontracting. GSA concluded, however, that the bid was nonresponsive because the firm was neither an established nor a newly organized specialist as required by the solicitation.

GSA determined from information submitted by Stauffer after bid opening that the firm only sporadically engaged in woodwork fabrication. Because of Stauffer's need to take over independent mills to perform mill work, GSA concluded the firm was not regularly engaged in such work. With regard to gypsum plaster work, GSA concluded that Stauffer did not maintain a regular skilled work force even though Stauffer regularly may have employed one skilled individual.

The requirement for listing subcontractors is designed to eliminate the practice of bid shopping and is considered a material requirement of the invitation. 43 Comp. Gen. 206 (1963). Bidders' compliance with this requirement, therefore, is treated as a matter of bid responsiveness rather than the responsibility of the bidder. 43 Comp. Gen. supra. However, all that is required for the bid to be responsive is for the bidder to list the intended subcontractors or to list oneself if there is no intention to subcontract the work in question. See Wickham Contracting Company, Inc., B-179947, April 5, 1974, 74-1 CPD 173. For example, a failure to list second-tier subcontractors does not render a bid nonresponsive where there is no provision for listing second-tier subcontractors. Edgemont Construction Company, B-181250, August 29, 1974, 74-2 CPD 129.

In this case the requirement that certain work be done by specialists was stated in the specification. However, there was no requirement for bidders to list in their bids their specialist qualifications as a matter of demonstrating responsiveness to the specialist requirement. (For purposes of this decision, we need not consider whether such a listing requirement would have been proper.) Since a bidder was not required to furnish documentation with its bid regarding compliance with the specialist requirement except to identify its intention to perform the work with its own employees or to identify its intended subcontractor for such work, the contracting officer found it necessary, prior to award, to obtain evidence of the

qualifications of the listed specialist. However, any such determination relates to the bidder's responsibility rather than to the responsiveness of the bid in the absence of a clear requirement for submitting such material with the bid and definitive specialist criteria in the specification.

We therefore conclude that Stauffer's bid was responsive to the subcontractor listing requirement because it did all that was required by the solicitation. That is, it listed itself for this specialist work, which satisfied the purpose of the listing requirement. It committed itself to perform the work with its own employees thereby effectively precluding itself from bid shopping for a subcontractor after bid opening but leaving open the possibility of employing qualified personnel. We believe the agency's determination of nonresponsiveness was unreasonable.

We do not find it necessary to review the merits of GSA's determination that Stauffer could not qualify as either an established specialist or, essentially, a newly organized one. Because the matter relates to Stauffer's responsibility and the firm is a small business concern, a negative determination by GSA ordinarily should have been referred to the Small Business Administration (SBA), which is authorized to conclusively determine all aspects of responsibility of small business concerns. We recommend that GSA reconsider its determination as to Stauffer's qualifications to perform the work. Should Stauffer be found nonresponsible, the matter should be referred to SBA. In the event SBA certifies as to Stauffer's qualification to perform the work, GSA should consider and report to this Office as to the propriety of the relief sought by Stauffer.

Accordingly, the protest is sustained and remanded for further administrative consideration.

This decision contains a recommendation for corrective action to be taken. Therefore, we are furnishing copies to the Senate Committees on Governmental Affairs

and Appropriations and the House Committees on Government Operations and Appropriations in accordance with section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. § 1176 (1970), which requires the submission of written statements by the agency to the Committees concerning the action taken with respect to our recommendation.



Acting Comptroller General
of the United States