

Protest of)
FRANKLIN E. SKEPTON) Date: October 6, 1987
Solicitation No. 419980-87-A-0098) P.S. Protest No. 87-98

DECISION

Franklin E. Skepton, General Contractor (Skepton), protests the proposed award of a contract for construction of the new Palmer Branch facility in Easton, PA, to Canjalyn Constructors, Inc. (Canjalyn), under Solicitation No. 419980-87-A-0098. The protester contends Canjalyn's bid is nonresponsive and that Skepton should be awarded the contract.^{1/}

Solicitation No. 419980-87-A-0098 was issued August 17, 1987, by the Philadelphia Facilities Service Center with a bid opening date of September 18, 1987. Canjalyn's bid was low. The protester alleges Canjalyn's bid to be nonresponsive because it was not accompanied by PS Form 7319-B, Representations and Certifications. The contracting officer determined that Canjalyn's failure to submit the form was minor informality no affecting the responsiveness of Canjalyn's bid.

Skepton submitted a September 21 protest to the contracting officer which was denied as obviously without merit September 28 pursuant to PCM 2-07.8 e. An identical September 32 protest was sent to the Comptroller General as was the September 24 protest on the same grounds by Lehigh Valley Carpenters Local Union No. 600 (Union). The Comptroller General referred both protest to the Postal Service, and they were received September 30, 1987.

Section 2-301 (a) of the PCM provides that to be considered for award, "a bid must comply in all material respects with the invitation for bids so that, both as to the method and timeliness of submission and as to the substance of any resulting contract, all bidders may stand on an equal footing." (Emphasis added.) PCM 2-405 requires the contracting officer either to waive or give the bidder an opportunity to correct an irregularity "which is merely a matter of form or is some immaterial variation from the exact requirements of the invitation for bids, having no effect or merely a trivial or negligible effect on price, quality, quantity, or delivery of the supplies or performance of

^{1/} Because the facts are clear from the protester's and Canjalyn's submissions and the legal issues involved are not novel, this protest is appropriate for summary disposition without a report from the contracting officer. Postal Contracting Manual 2-407.8 f. (12).

the services being procured, and the correction or waiver of which would not affect the relative standing of, or otherwise be prejudicial to, bidders." Such minor irregularities do not render bid nonresponsive. Zinger Construction Co., Inc., P.S. Protest No. 85-67, November 7, 1985.

Protester argues that the Representations and Certifications are a mandatory requirement of the bidding process, since completion of PS Form 7319-B is listed on PS Form 7389-A among the procedures to which the bidder's attention is called "[t]o insure the submission of complete bids and to avoid omissions that could result in your bid being nonresponsive. . . ." Submission of PS Form 7319-B with the bid is not rendered mandatory solely because its completion is recommended on PS Form 7389-A. Bidders are admonished to complete the Representations and Certifications to ensure the submission of complete bids, thereby expediting the procurement process and obviating protests. He also contends that the Notice of Requirement for Certification of Nonsegregated Facilities on page 2 of the IFB which provides, in part, "Failure of a bidder to agree to the Certification of Nonsegregated Facilities will render his bid nonresponsive" compels rejection of Canjalyn's bid. Under the terms of that provision, a bidder signing the bid without qualification is deemed to have signed and agreed to the provisions of the Certification. Canjalyn did not qualify its bid in this regard and thereby agreed to the terms of the Certification.

The Comptroller General has determined that the completion of representations and certifications analogous to those at issue here was not a prerequisite to bid's responsiveness. A & C Building and Industrial Maintenance Corporation, Comp. Gen. Dec. B-218035, February 13, 1985, 185-1 CPD & 195; Dependable Janitorial Service and Supply, Comp. Gen. Dec. B-190956, April 13, 1978, 78-1 CPD & 283. In Structures, Inc., P.S. Protest No. 83-21, April 28, 1983, and Alaska Mechanical, Inc., P.S. Protest No. 85-88, December 4, 1985, we agreed with that position with respect to PS Form 7319-B, finding that failure to complete and submit the form was a minor informality that could be corrected after bid opening because its content has no effect on price, quantity, quality, delivery, or performance of services required by the solicitation.

Accordingly, we conclude that Canjalyn complied with all material aspects of the solicitation, and that its bid was responsive. The protest is summarily denied.^{2/}

**[Signed: 'D.D. Anna
for"]**

William J. Jones
Associate General Counsel
Office of Contracts and Property Law

[Compared to original 3/15/93 WJJ]

^{2/} In view of this resolution we need not consider the standing of the Union to protest this award, and we make no finding on that issue.