

Protest of) Date: November 23, 1987
YORK INTERNATIONAL CORPORATION)
Solicitation No. 19-9986-87-A-0069) P.S. Protest No. 87-111

DECISION

York International Corporation (York), protests award of a contract to Weathercraft Plumbing (Plumbing) for the installation of chillers at the main post offices in Lincoln and Omaha, NE, under Invitation for Bids No. 19-9986-87-A-0069, (the IFB). York claims that it would be prejudiced by Weathercraft's substitution of a competitor's chillers in its performance of the contract.

The IFB was issued August 7, 1987, by the Facilities Service Office, Overland Park, KS, with bids due September 9. Six bids were received of which Weathercraft was low. York did not submit a bid. The contract document is dated September 15, 1987, although notice of award was sent to Weathercraft September 16.

York claims it submitted a proposal to Weathercraft to supply the chillers required under the contract, and asserts that Weathercraft utilized its proposal in compiling the bid to the Postal Service. York asserts that the solicitation requires solid state starter controls on the chillers and that the provision of electric/mechanical starters by Weathercraft would be improper.^{1/} York claims it bid such solid state starters, which are more expensive than electric/mechanical starters, in its subcontracting proposal to Weathercraft, and was the only company to do so. It alleges that since the job was awarded by Weathercraft to another subcontractor, which was not in compliance with the solid state starter requirement, it has been disadvantaged and "the contract should be awarded" to York as the "only responsive bidder".

Weathercraft submitted comments to this protest. It states that York was not its subcontractor, but supplied a bid on chillers to its subcontractor, Verne Simmonds Co. Weathercraft also questions York's assertion that solid state starters are more

^{1/}Special Provisions, section 15R1.02, paragraphs b. and h. require two chillers be equipped with solid state starter controls.

expensive than electric/mechanical starters.

The contracting officer urges that York's protest be denied. He asserts that the protest is untimely, as the contract was awarded September 15 (although notification to the contractor was not issued until September 16) and the protest was received October 7, the sixteenth working day after the September 15 award.^{1/} Although York submitted a letter to the contracting officer on September 28, complaining about the same issues as here involved, the contracting officer did not consider that letter to constitute a protest.

The contracting officer also notes that York did not submit a bid on the solicitation. He contends York is merely a prospective subcontractor of Weathercraft and is therefore not an interested party with standing to protest. The contracting officer next states that the requirement for solid state starters could be changed during contract performance, although it was unchanged at the time of the contracting officer's report. He asserts that changes during the course of performance are not uncommon and are proper pursuant to various clauses of the General Provisions of Postal Service construction contracts.

York submitted comments in rebuttal to the contracting officer's statement. As to the timeliness issue, York states that the contracting officer advised, by letter, that the contract award date was September 16,^{1/} and that York relied to its detriment on that information by protesting October 7, the fifteenth working day after September 16. It argues that it should not be prejudiced by a later-asserted September 15 award date which would render its protest untimely.

Concerning the issue of standing, York admits not being a bidder on the solicitation. It argues however, that the chillers are not manufactured by bidders but must be acquired by subcontract,

^{2/}Postal Contracting Manual 2-407.8 d (3) provides that in order to be timely, protests of this type "must be received not later than 10 working days after the information on which they are based is known or should have been known, whichever is earlier; provided that no protest will be considered if received more than 15 working days after award of the contract in question."

^{3/}The notice of award to Weathercraft was also dated September 16.

and that the Postal Service's denial of information regarding a potential change in the specifications to such subcontractors, as allegedly occurred here, impugns the integrity of the competitive procurement process.

York acknowledges that changes in the specifications may be made during contract administration, but contends that they may not occur during the procurement process, especially in the absence of advice to all bidders of the changes. York alleges that the failure of the Postal Service to notify interested parties of a change in the specifications which would have allowed bidding electric/mechanical starters was prejudicial and requires cancellation of the solicitation and reprourement of the requirement.

Weathercraft bid in conformance with the solicitation requirements; it did not qualify its bid by limiting its bid to the provision of electric/mechanical starters. York does not contend otherwise; however, it alleges that Weathercraft currently does not intend to supply chillers in conformance with the contract requirements. An allegation that a successful bidder does not intend to supply items in conformance with its bid or with the specifications is a matter of contract administration and is not for consideration as a protest. Solomon Box Co., P.S. Protest No. 78-30, August 17, 1978; National ElectroSales Corp., P.S. Protest No. 85-46, August 15, 1985; Nelson Window and Glass Co., P.S. Protest No. 86-44, July 15, 1986. Although York challenges the propriety of the award, its allegation that the chillers Weathercraft proposes to use do not meet the requirements of the contract is actually a question of contract administration, unreviewable in a bid protest. Id.

Further, once a construction project has begun, the General Provisions of the contract empower the contracting officer to approve substitutions.

[T]he contractor may, at his option, use any equipment, material, article, or process which, in the judgment of the Contracting Officer is equal to that named.

General Provision 16 (a); Nelson Window and Glass Co., supra.

If Weathercraft requests such a change, it will be for the contracting officer to decide whether the substitution may be allowed under the contract provision.

The protest is dismissed.^{4/}

William J. Jones
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Office of Contracts and Property Law

[checked against original JLS 3/15/93]

^{4/}Because the protest is a matter of contract administration and, therefore, beyond our review authority, we need not decide whether the contract was awarded September 15 or 16; whether the protester was led to believe the contract was awarded on the 16th; whether the protest was timely submitted; or whether York, as a potential subcontractor, has standing to prosecute a protest. We note however that ordinarily, to be interested, a party must be eligible for award if the protest were upheld. Strapex Corp., P.S. Protest No. 85-33, July 11, 1985. But see Falcon Systems, Inc., Consolidated Bell, Inc., Intelligent Systems Corp., and Avnet Computer Technologies, Inc., P.S. Protest Nos. 86-31, 86-33 and 86-35, July 25, 1986.