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DECISION



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

FILE: B-201697

DATE: March 18, 1983

MATTER OF: Guarantee Electrical Company

DIGEST:

1. Generally, in both direct Federal procurements and grantee procurements a bid guarantee requirement is material as it protects the contracting agency's financial interest in having the low bidder sign the contractual documents and a bid accompanied by a bond for less than the required amount must be rejected as nonresponsive. Where, as here, however, the award is to be made on the basis of minority business enterprise (MBE) participation rather than on low price an inadequate bid bond may be waived by the grantee as it has no financial interest which can be protected by the bond.
2. Since bidders under grantee procurement were required to state whether they met MBE goal in order to qualify for MBE award preference, a bid that failed as initially submitted to offer any minority business participation, may not be modified by the bidder's subsequent submission of a proposed minority subcontractor.
3. GAO does not conduct investigations of grantee procurements under grant review procedures. Complainant is required to furnish full information regarding procurement deficiencies alleged, and not simply express its suspicion that grantee may have violated applicable procurement procedures.

Guarantee Electrical Company complains of the award of contracts for electrical renovation work at the Beecher Terrace housing project to Cottoner Electrical Construction, Inc. and a joint venture composed of Standard Electric Co., Inc. and Craven Electric Co.,

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Inc. under a solicitation issued by the Housing Authority of Louisville. The Housing Authority received funds for this work from the Department of Housing and Urban Development (HUD) under amendments to its Annual Contributions Contract with HUD.

Guarantee contends that the awards to Cottoner and Standard-Craven were improper because Cottoner failed to submit the required 5 percent bid bond. Guarantee argues that it is entitled to the award even if Cottoner's bid was acceptable because its proposed plan for the participation of a minority business enterprise (MBE) subcontractor complied with the solicitation's MBE goal and its bid was low. As discussed below, we deny the complaint in part and dismiss it in part.

Pursuant to our public notice entitled "Review of Complaints Concerning Contracts under Federal Grants," 40 Fed. Reg. 42406, September 12, 1975, we review the propriety of contract awards made by grantees to insure that Federal agencies are requiring their grantees, in awarding contracts, to comply with any applicable Federal legal requirements, including the grant agreement. See Copeland Systems, Inc., 55 Comp. Gen. 390 (1975), 75-2 CPD 237. We consider HUD's Annual Contributions Contract with the Housing Authority as a grant for purposes of our review. See Joseph A. Chesanek, B-183825, July 2, 1976, 76-2 CPD 6. The Housing Authority's contract with HUD established the basic procurement procedures it was required to follow in awarding the contract for this project. In general, the contract required at Part II § 109 that the Housing Authority conduct its procurements in a manner which provides prospective contractors a "full opportunity for open and competitive bidding." This is a requirement that the Housing Authority comply, in effect, with the fundamental principles of Federal procurement inherent in the concept of competition. See Wisner & Becker Contracting Engineers, B-202075, June 7, 1982, 82-1 CPD 538.

The Housing Authority's invitation for bids required that a bid bond equal to 5 percent of the bid "shall be submitted with each bid" and established a goal that MBE subcontractors represent at least 33 percent of the bid price. The invitation also stated that each bid must include information on MBE participation if the MBE goal is attained; if MBE participation falls short of the goal; or

even if there is no MBE participation. Finally, the invitation listed the following award preferences based on MBE participation:

"a. First preference will be given to the low bidder provided that the low bidder has met the MBE goal.

"b. Second preference will be given to the lowest bidder whose bid is within the HAL [Housing Authority] budget and who has met the MBE goal or who is closest to meeting the MBE goal.

"c. If none of the bidders whose bids are within the HAL budget have any MBE participation, third preference will be given to the low bidder, regardless of MBE participation."

Six bids were received by the bid opening date; one was withdrawn and the remainder were opened and evaluated. Guarantee, which submitted the low bid of \$1,259,604 for all the work, offered no MBE participation. Only two bidders, Cottoner Electrical Company, a minority-owned business firm, and Standard-Craven, with 39 percent minority business participation, satisfied the solicitation's MBE goals. Neither firm bid on the entire project, but the two bids combined included the entire project for \$1,487,557.60. Cottoner, however, failed to satisfy the 5 percent bonding requirement as its bid included a check for less than one percent of its total bid.

Subsequent to bid opening, the Housing Authority informed all bidders that the contract award would be delayed because some bidders either failed to submit MBE forms with their bids or submitted improper MBE forms. The Housing Authority stated that it would waive these irregularities as minor informalities and permit all bidders to "resubmit in proper form all required MBE attachments." In response to this notice, Guarantee, whose original bid included no MBE forms and indicated that it had not met the MBE goal, submitted MBE forms indicating that it was subcontracting 31.9 percent of the work to an MBE formed a couple of weeks after the bid opening date.

A few days later, the Housing Authority advised Cottoner that the bid bond documents it had submitted subsequent to bid opening met the 5 percent bonding requirement and advised that firm that it and Standard-Craven would receive the award. This was later confirmed

by a resolution of the Housing Authority. Guarantee then protested to the Housing Authority objecting to the proposed awards essentially on the basis that its bid was low and met the MBE goal and that Cottoner had not met the solicitation's bonding requirements. Although at first the Housing Authority advised Guarantee that, because none of the bidders had complied with all the solicitation requirements, it proposed to reject all bids and resolicit the project, it reconsidered this proposed action after consultation with HUD and concluded that awards to Cottoner and Standard-Craven would be proper.

Guarantee contends that award to Cottoner was improper because the cashier's check in the amount of \$3,250 that accompanied its bid on the opening date failed to satisfy the 5 percent bid bond requirement of the solicitation. While HUD acknowledges that Cottoner's initial bid did not include an adequate bid guarantee, it argues that based upon the additional bond furnished after bid opening, the Housing Authority properly determined that Cottoner's bid satisfied the bid guarantee requirements. HUD contends that Cottoner's bid bond could be corrected after bid opening in this manner since the solicitation permitted waiver of minor informalities. HUD also maintains that since only Cottoner's and Standard-Craven's bids fit within the solicitation's MBE award preference it could properly waive this irregularity in Cottoner's bid without prejudicing Guarantee because, in the agency's view, Guarantee did not qualify for the award.

The Annual Contributions Contract provided that each bidder "be required to furnish a bid bond." The solicitation, as indicated before, specified that this bond be submitted with the bid. Under the rules applicable to direct Federal procurements, which like the Housing Authority's solicitation provide for a waiver of minor informalities, a bid guarantee requirement is material, and as such, a bid accompanied by a bond which is for an amount less than specified in the solicitation must be rejected as nonresponsive except in certain limited circumstances. See Alaska Industrial Coating, B-190295, October 12, 1977, 77-2 CPD 290. These rules permit the waiver of a deficient bond in instances where the full amount of the bond is not necessary to protect the contracting agency's financial interests in the event the low bidder fails to execute the required documents. See Clear Thru Maintenance, Inc., B-203608, June 15, 1982, 61 Comp. Gen. _____, 82-1 CPD 581.

Here, since Cottoner was eligible for award because it was the lowest bidder which met the solicitation's MBE goal, not because it was the overall lowest bidder, there was no financial interest for the bond to protect. In these particular circumstances, the Housing Authority could have waived Cottoner's failure to provide the proper bid guarantee. Consequently, we have no reason to object to the Housing Authority's allowing Cottoner to supplement its originally inadequate bond after bid opening.

Further, Guarantee asserts that the Housing Authority's failure to consider Guarantee's bid as satisfying the solicitation's 33 percent minority MBE goal was improper. Guarantee points out that although its initial bid did not propose any MBE participation, when the Housing Authority extended the period for submission of attachments listing MBE participants, Guarantee proposed a qualified MBE subcontractor, West End Electric.

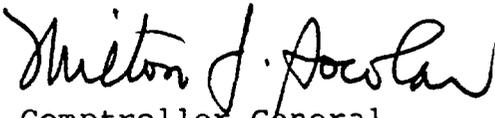
HUD replies that Guarantee's initial bid indicated no MBE participation; that the Housing Authority determined that Guarantee's proposed subcontractor, West End, was not a qualified MBE; and that even if the late submission of West End is considered, Guarantee's resulting MBE participation of only 31.9 percent does not satisfy the 33 percent MBE goal of the solicitation.

Here, the solicitation provided that a bidder's eligibility for award may depend on its meeting the MBE goal and required that a bidder indicate in its bid whether it met the MBE goal. Consequently, because Guarantee's initial bid specifically indicated that it did not include any MBE participation, that firm could not improve its position by proposing a MBE subcontractor after bid opening and its bid must be viewed as offering no MBE participation. Paul N. Howard Company--Reconsideration, 60 Comp. Gen. 606 (1981), 81-2 CPD 42. There was, of course, nothing improper in allowing those bidders which had proposed MBE participation in their bids to complete or correct their supporting information. Paul N. Howard Company--Reconsideration, supra. In view of the above, it does not matter whether Guarantee's proposed subcontractor, West End Electric, was or was not a MBE. Guarantee's complaint on this point is denied.

Guarantee's allegations concerning Cottoner's MBE status amount to no more than suspicions, i.e., "we suspect that the performance and payment bond was, in fact paid for by a majority contractor" and "we suspect a majority of the

work was subcontracted by the minority contractor to a majority contractor, all according to a preconceived plan," without any indication of the basis for these suspicions. Speculative allegations of this type do not satisfy the requirement of our public notice, that complaints provide a full statement of the basis on which it is believed that proper contracting procedures have not been followed. See Hispano American Corporation--Reconsideration, B-200268.2, July 1, 1981, 81-2 CPD 1. Further, our Office does not, as Guarantee requests, conduct investigations under our grant review procedures.

The complaint is denied in part and dismissed in part.

for 
Comptroller General
of the United States