

BEFORE THE
MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeal of CARL BELT, INC.)
)
Under SHA Contract No. G 525-) Docket No. MSBCA 1743
502-629)

November 5, 1993

Responsiveness

The failure of the apparent low bidder to include the complete SHA proposal book with its bid did not make its bid non-responsive where the bid on its face represented an unqualified commitment to perform the requirements of the contract.

APPEARANCE FOR APPELLANT: None

APPEARANCE FOR RESPONDENT: Edward S. Harris
 Assistant Attorney General
 Baltimore, MD

OPINION BY CHAIRMAN HARRISON

Appellant timely appeals the denial of its bid protest that the low bid was non-responsive.

Findings of Fact¹

1. On June 29, 1993 bids were opened for State Highway Administration (SHA) Contract No. G 525-502-629 (the Contract). The Contract was for the general construction of a fuel island in the Oakland Maintenance Facility in Garrett County, Maryland. SHA received six (6) bids under the contract. The firm submitting the lowest bid was Tyree Organization, Ltd. (Tyree) in the amount of \$259,280.00. Appellant submitted the second lowest bid in the amount of \$301,517.00.
2. At the bid opening, the bids of Tyree and one other bidder were announced to be "irregular"² due to the fact that these bidders failed to submit the entire invitation for bids with

¹Appellant did not comment on the Agency Report and neither party requested a hearing. The Findings of Fact are reproduced substantially in the form appearing in the Agency Report.

²SHA uses the term "irregular" as an indication at the public bid opening of an unusual or atypical characteristic in the bid. The "irregular" designation is not an indication of non-responsiveness and is intended solely to communicate an area of potential further inquiry.

their bid submission.

3. Tyree's bid included the proposal form, the schedule of prices including unit prices for all line items in the bid, the procurement affidavit, the four addenda, and the comprehensive signature page executed by an appropriate corporate officer (the President of the corporation).³ Apparently, the construction contractor's regular practice with regard to SHA solicitations is to return the entire proposal book with their bid. Because Tyree did not include the entire proposal book with its bid submission the bid was announced as irregular⁴ at the bid opening. However, its bid was subsequently determined to represent an unqualified commitment to perform the requirements of the Contract.
4. On July 1, 1993, Appellant submitted a bid protest raising Tyree's failure to submit the entire proposal book with its bid submission. In its protest letter, Appellant articulated this basis of protest as three separate issues. The first issue raised by the protest is the failure of the bidder to submit the entire "invitation to bid" (proposal) book. The second basis for protest was the fact that the bid was read as irregular and incomplete at the bid opening, and the actual pages included with the bid were not announced at the bid opening. The third basis for protest, also related to the failure to submit an entire proposal book, alleges that because the entire book was not submitted pages could have been added or removed without any means of verification.
5. On August 16, 1993, the SHA procurement officer issued a final decision denying the protest. The basis for the denial was that the bid documents submitted by Tyree at the time of bid opening were signed by the authorized corporate

³While not included in the Agency Report, the record reflects that the required bid security was included with Tyree's bid. See Exhibit 5 to the Agency Report.

⁴See footnote 2.

officer and reflected an unqualified commitment to perform the requirements of the Contract. On that basis, SHA concluded that the Tyree bid was responsive and denied Appellant's protest.

Decision

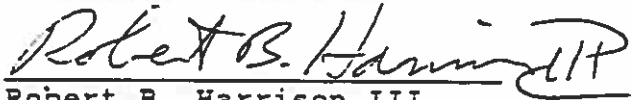
Although the Appellant's protest is divided into three separate issues, this appeal rises or falls on the single issue of whether the Tyree bid is responsive.

The record does not reveal any basis for the conclusion that a bid must include the entire proposal book in order for the bid to be responsive. State Finance and Procurement Article, §11-101(r) defines a responsive bid submitted under the competitive sealed bidding procedure that "conforms in all material respects to the invitation for bids." See also COMAR 21.01.02.01(78). A responsive bid "must constitute a definite and unqualified offer to meet the material terms of the IFB." Long Fence Company, Inc., MSBCA 1259, 2 MSBCA ¶123 (1986) at p. 6. Tyree's bid included the proposal form, the schedule of prices including unit prices for all line items, the procurement affidavit, all addenda, required bid security, and the signature page signed by an authorized representative of the corporation. It is an unqualified commitment to perform the requirements of the Contract. On its face, the bid presents no basis for a determination of non-responsiveness.

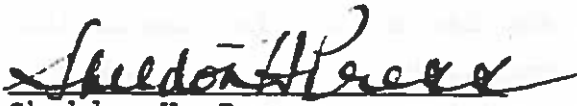
In its protest, Appellant suggests that because Tyree did not submit a complete proposal book "there is no way to know which documents were actually submitted with the bid." Apparently, the protestor is suggesting that the absence of a collated Proposal Book evidences the possibility of a post-bid alteration of the bid. However, there is no basis to conclude from this record that the bid submitted by Tyree is any more or less susceptible to post-bid alteration than any other bid submitted under the competitive sealed bid process. The bids are opened publicly and are available for inspection. The record does not reflect that the Tyree bid was altered and there is no evidence to suggest that it may have been altered.

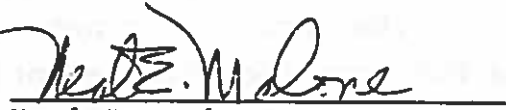
For the foregoing reasons, the Appellant's appeal is denied.
It is ORDERED this 5th day of November, 1993 that the appeal
is dismissed with prejudice.

Dated: November 5, 1993


Robert B. Harrison III
Chairman

I concur:


Sheldon H. Press
Board Member


Neal E. Malone
Board Member

Certification

COMAR 21.10.01.02 Judicial Review.

A decision of the Appeals Board is subject to judicial review
in accordance with the provisions of the Administrative Procedure
Act governing cases.

Annotated Code of MD Rule 7-203 Time for Filing Action.

(a) Generally. - Except as otherwise provided in this Rule or
by statute, a petition for judicial review shall be filed
within 30 days after the latest of:

- (1) the date of the order or action of which review is
sought;
- (2) the date the administrative agency sent notice of
the order or action to the petitioner, if notice was
required by law to be sent to the petitioner; or
- (3) the date the petitioner received notice of the
agency's order or action, if notice was required by law
to be received by the petitioner.

(b) Petition by Other Party. - If one party files a timely
petition, any other person may file a petition within 10 days
after the date the agency mailed notice of the filing of the
first petition, or within the period set forth in section (a),
whichever is later.

* * *

I certify that the foregoing is a true copy of the Maryland State Board of Contract Appeals decision in MSBCA 1743, appeal of Carl Belt, Inc. under SHA Contract No. G 525-502-629.

Dated: *November 8, 1993*

Mary F. Priscilla

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Recorder

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