

BEFORE THE
MARYLAND STATE BOARD OF CONTRACT APPEALS

In the Appeal of THE COP SHOP, INC.)

And)

SECOND CHANCE BODY ARMOR, INC.)

Under DGS Invitation for Bid)
No. 001IT809629)

Docket Nos. MSBCA 2081 & 2082

September 30, 1998

Responsiveness – The authorized signature of a bidder is mandatory to establish both the intent of the bidder to be bound and the responsiveness of his bid. Responsiveness must be determined from the face of the bid. Thus when it cannot be determined from the bid documents that the signature that appears on the bid documents constitutes the signature of the bidder, the bid is nonresponsive.

APPEARANCE FOR APPELLANTS:

David B. Love, Esq.
Baltimore, MD

APPEARANCE FOR RESPONDENT:

John H. Thornton
Assistant Attorney General
Baltimore, MD

OPINION BY CHAIRMAN HARRISON

Appellants timely appeal the denial of their bid protest that their bid was the lowest responsive and responsible bid.

Findings of Fact

1. On May 29, 1998, the Department of General Services (DGS) is-sued invitation to Bid (ITB) No. 001IT809629 for 500 stab-resistant body armor vests for the Maryland House of Correction.
2. An Addendum was issued on June 16, 1998.
3. Five bids were received and opened at the public bid opening on June 26, 1998.
4. The low bidder was Howard Uniform at \$142,000. The second-low bidder was Southern Police Supply (Southern) at a price of \$148,000.
5. DGS also received a bid which identified the bidder as follows:

THE COP SHOP, INC. AND
SECOND CHANCE BODY ARMOR, INC. (CO-BIDDERS)
P.O. Box 578
Central Lake, MI 49622

The bid form and the accompanying bid and contract affidavits were signed by James S. Walters, Jr., the President of The Cop Shop, Inc., and in the name of The Cop Shop, Inc. only.

The bid offered two prices, in these words:

1.)	PRISM MW-1	500 x \$340 = \$170,000
2.)	ALTERNATIVE MODEL-PRISM- MODEL MW-1-M	UNIT COST - \$270.00 <u> x 500</u> TOTAL COST = \$135,000

6. After bid opening DGS concluded based on COMAR 21.05.02.21 that the bid price of \$135,000 was intended as an alternate bid that could not be accepted because alternate bids were not requested by the ITB. COMAR 21.05.02.21 provides:

Unless alternate bids are requested in the solicitation, these bids may not be accepted. However, if a bidder clearly indicates a base bid, it shall be considered as though it were the only bid submitted by the bidder.

The provisions of this regulation shall be set forth in the solicitation and, if multiple or alternate bids are allowed, it shall specify their treatments.

7. The ITB did not specifically inform bidders of the provisions of COMAR 21.05.02.21 prohibiting alternate or multiple bids unless requested by the solicitation. However, Section 21 of the Terms and Conditions for Purchase Orders Over \$25,000 of the ITB contained the notice required by COMAR 21.07.03.21: "The regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR Title 21) in effect on the date of execution of a Contract are applicable to this contract."
8. DGS, therefore, concluded that Appellants were on constructive notice of the provisions of COMAR 21.05.02.21 precluding alternate bids unless requested by the solicitation. DGS thus considered the \$170,000 bid price of the Appellants as the base bid and thus the only bid submitted and disregarded the alternate bid of \$135,000. DGS determined that Southern, the second-low bidder at \$148,000, was entitled to a preference over Howard Uniform (which bid \$142,000) by application of the 5% small business preference and that Southern therefore was entitled to award of the contract.
9. On June 30, 1998, the National Sales Administrator of Second Chance Body Armor, Inc. wrote a letter to the Procurement Officer, which DGS treated as a protest. The letter stated in relevant part:

This letter is to officially serve notice that The Cop Shop/Second Chance was the "lowest responsive and responsible bidder" on the above mentioned bid. We expect to be awarded this bid based on the fact that our model PRISM MW-1-M was quoted 9% lower

than the PACA vest submitted by Southern Police Supply.

Nowhere in the bid does it state that an alternate will not be accepted.

10. The Procurement Officer denied the protest by final decision dated July 22, 1998.
11. The first ground for denial of the protest was that COMAR 21.05.02.21 prohibited DGS from considering the alternate bid submitted since the ITB did not request alternate bids. The second ground for denial of the protest was that the bid was ambiguous, and therefore nonresponsive, by virtue of the way in which it identified the bidder and was executed. The third ground for denial was that if the entire bid was nonresponsive the Appellants lacked standing to protest that the alternate bid was not considered.
12. On July 31, 1998, The Cop Shop, Inc. and Second Chance Body Armor, Inc. filed separate appeals to this Board in their respective individual names. The appeals were, however, filed by the same attorney, and the Board finds that the appeals were intended to be the joint appeal of the Appellants. The Board, therefore, consolidates the appeals for purposes of issuing this decision. There was no request for a hearing and no comment on the Agency Report was filed.

Decision

The Procurement Officer's decision relied on three grounds to deny the protest filed by Appellants. The Board shall address only one of the issues; that of whether the bid was responsive. In this regard the Procurement Officer's decision dated July 22, 1998 provided as follows:

Careful review of the bid of The Cop Shop/Second Chance has shown us two additional grounds for denying the protest. The first is that the bid is nonresponsive and was required to be rejected. The bid was submitted in the following names: "The Cop Shop, Inc. and Second Chance Body Armor, Inc. (Co-Bidders)" with the address of the "bidder" stated on the face of the bid as P.O. Box 578, Central Lake, MI 49622, the address of Second Chance Body Armor, Inc. However, the bid was signed only by James S. Walters, Sr., as "President - Cop Shop." Affidavits submitted with the bid at bid opening show The Cop Shop, Inc. to be a Maryland Corporation with an address of 803 E. Baltimore St., Baltimore, MD. Nothing in the bid shows any authority on the part of Mr. Walters (1) to bind Second Chance Body Armor, Inc. to the bid or (2) to sign the bid on behalf of a partnership, joint venture, or other joint undertaking of The Cop Shop, Inc. and the Second Chance Body Armor, Inc. Therefore, on its face the bid is ambiguous and potentially unenforceable by the State against the named bidder, "The Cop Shop, Inc. and Second Chance Body Armor, Inc (Co-Bidders)". Therefore, the bid is nonresponsive. By law, a nonresponsive bid must be rejected. Under the circumstances, whether or not the bidder properly or improperly bid an alternate product, the bid could not be accepted in any case.

The Board agrees with the Procurement Officer that the bid was not responsive because intention to be bound cannot be determined from the face of the bid. Responsiveness must be determined from the face of the bid itself and not from material submitted after bid opening. Calvert General Contractors Corp., MSBCA 1314, 2 MSBCA ¶140 (1986) and cases cited at p. 9. From the face of the bid it cannot be determined who the bidder actually is. The name of the bidder as it appears on the bid form is:

THE COP SHOP, INC. AND
SECOND CHANCE BODY ARMOR, INC. (CO-BIDDERS)

However, the bid is signed only by Mr. Walters as the President of The Cop Shop, Inc. and likewise the bid and contract affidavits are signed only by Mr. Walters as the President of The Cop Shop, Inc.¹ There is nothing accompanying the bid that shows any authority of the President of The Cop Shop, Inc. to either bind Second Chance Body Armor, Inc. to the bid or to sign the bid on behalf of some joint undertaking as signified by use of the term "CO-BIDDERS" in the bid submission.

As the Board noted in Apollo Paving Company, Inc., MSBCA 1092, 1 MSBCA ¶29 (1982) at p. 3,²

The requirement that a bid be signed historically has been treated as a matter of substance and not one of form. The reason, of course, is that without the signature of an authorized representative of the bidder's organization, the bid would not constitute necessarily a binding offer to perform the work described in the invitation. The low bidder, under such circumstances, would have the opportunity to withdraw his bid after reviewing the competitors' prices, thus obtaining the proverbial "two bides of the apple." Such a system obviously would be extremely unfair and ultimately would subvert the integrity of the competitive bid procedure. For this reason, therefore, the authorized signature of a bidder is considered mandatory to establish both the intent of that bidder to be bound and the responsiveness of his bid. Compare Comp. Gen. Dec. B-192979, 79-1 CPD § 65 (1979); Comp. Gen. Dec. B-123061, 34 Comp. Gen. 439 (1955).

Herein we conclude that intention of the "CO-BIDDERS" to be bound cannot be ascertained from the face of the bid. Thus, the bid is not responsive; i.e., under the facts of this appeal we do not know who the bidder actually is. Is it the Appellants as co-bidders, or is it only The Cop Shop, Inc. whose President signed the bid and accompanying affidavits, or is it neither? The bid under scrutiny in this appeal would not constitute necessarily a binding offer to supply the body armor described in the ITB. The bidder (whomever it may have been) would have the opportunity to withdraw its bid when bids were exposed at bid opening after reviewing its competitors prices.

¹ Mr. Walters also represented as President of The Cop Shop, Inc. that the bidder possessed a valid sales and use tax license.

² The Board found the bid in question in Apollo to be responsive notwithstanding the absence of a bid signature because intention to be bound could be ascertained from the bidder's signature on other documents integral to and accompanying the bid.

Finally we conclude that the bid price itself is ambiguous, thus making the bid nonresponsive, under the facts of this appeal where a base bid price is offered along with a lower alternate bid price and the identity of the bidder submitting these bids is uncertain.³

Accordingly, the appeal is denied. Wherefore, it is ORDERED this 30th day of September, 1998 that the appeal is denied.

Dated: September 30, 1998

Robert B. Harrison III
Chairman

I concur:

Candida S. Steel
Board Member

Randolph B. Rosencrantz
Board Member

³ We do not express any opinion on the question of whether failure to include the provisions of 21.05.02.21 in the bid documents would allow the submission of an alternate bid where the solicitation does not request alternate bids.

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 Nos. 2081 & 2082, appeal of The Cop Shop, Inc. and Second Chance Body Armor, Inc. under DGS Invitation for Bid No. 001IT809629.

Dated:

Mary F. Priscilla
Recorder