



United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Specialized Contract Services, Inc.

File: B-283451

Date: October 21, 1999

Herbert C. Ross for the protester.
COL Nicholas P. Retson, CPT Melissa T. Miller and Matthew W. Bowman, Esq.,
Department of the Army, for the agency.
John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General
Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly accepted a bid that used the bidder's trade name, rather than its corporate name, where it was possible to identify, from evidence that was existing and publicly available at the time of bid opening, the actual bidder with sufficient certainty such that the bidder would not be able to avoid the obligations of its bid.

DECISION

Specialized Contract Services, Inc. (SCSI) protests the proposed award of a contract to Heavenly Ham under invitation for bids (IFB) No. DABT23-99-B-0035, issued by the Department of the Army for meals for military applicants at the Military Entrance Processing Station, Knoxville, Tennessee.

We deny the protest.

The agency received three bids by the bid opening date of August 9, 1999. Heavenly Ham's total bid of \$193,125 was low and SCSI's total bid of \$224,625 was second low. Agency Report, Tab M, Abstract of Bids. The bid submitted by Heavenly Ham was signed by Robert W. Tonker, Jr., and identified the bidder as follows:

Heavenly Ham
9307 Kingston Pike
Knoxville, TN 37922

Agency Report, Tab F, Heavenly Ham Bid, at 1. In Heavenly Ham's representation and certification as to its "corporate status," the blank for "sole proprietorship" was checked and included the following hand written notation: "Limited Liability Corp." Id. at 17.

SCSI protests that the bid submitted by Heavenly Ham must be rejected, arguing that "the legal entity 'Heavenly Ham' did not submit the bid." Protest at 2. The protester points out that Heavenly Ham is a "nationwide franchise" and "all the stores do business as (dba) 'Heavenly Ham' operating under the franchise agreement." Id. at 1. The protester adds here that the business license issued to the entity doing business at the proposed awardee's address is Knox-Ham Enterprises, LLC. Id. at 1-2.

After receipt of the protest, the agency checked the government's Central Contractor Registration (CCR), which listed the awardee's "legal business name" as "KnoxHam Enterprises," and stated that it was doing business as "Heavenly Ham." Agency Report at 2; Agency Report, Tab J, CCR, at 1.

The awardee also provided the agency with a copy of its business tax returns for 1998 and 1999, which lists the business as "Heavenly Ham," a prior business tax license issued by Knox County, Tennessee, which lists the proposed awardee's business address as "Heavenly Ham, 9307 Kingston Pk, Knoxville 37922," and a Department of Health, Food Service Inspection Report, dated August 3, 1999, which lists the establishment's name as "Heavenly Ham." Agency Report, Tabs H and I. The awardee also supplied the agency with a copy of articles of organization and certificate of existence for Knox-Ham Enterprises, LLC (a Limited Liability Company). Agency Report, Tab H. The agency concluded based upon the above that Heavenly Ham is the trade name under which Knox-Ham conducts business, and that the bid submitted therefore legally bound Knox-Ham to perform and was thus acceptable.

In general, a contract cannot be awarded to any entity other than the one that submitted the bid. While this rule generally applies in situations where it is unclear from the face of the bid which of two or more legal entities is the bidder, it does not prohibit an award where, as here, a bidder uses its trade name instead of its formal corporate name in the bid. Sunrise Int'l Group, Inc., B-251956, Feb. 8, 1993, 93-1 CPD ¶ 114 at 2. Where a trade name is used, and it is possible to identify the actual bidder with sufficient certainty that the bidder would not be able to avoid the obligation of its bid, the acceptance of the bid is proper. Id.; Coonrod & Assocs., B-228914, Dec. 3, 1987, 87-2 CPD ¶ 549 at 2. Evidence existing and publicly available at the time of bid opening may be submitted after bid opening and prior to award to establish the bidder's use of the trade name. Sunrise Int'l Group, Inc., supra; Coonrod & Assocs., supra.

The record here sufficiently identifies Heavenly Ham as the same legal entity as Knox-Ham Enterprises, so that the bid submitted by Heavenly Ham at 9307 Kingston Pike, Knoxville, Tennessee, would legally bind Knox-Ham Enterprises. The

information on the CCR, as well as the business tax licenses, business tax returns, food service inspection report, articles of organization, and certificate of existence--evidence which existed and was publicly available at the time of bid opening--show that Heavenly Ham with the address of 9307 Kingston Pike in Knoxville is the trade name for Knox-Ham Enterprises, a North Carolina LLC, and does not exist as a separate legal entity.¹

The protester next questions whether Robert Tonker, Jr., who signed the bid, was authorized to do so. In response to the protest, the awardee submitted, at the agency's request, a written statement establishing that Mr. Tonker is a operations manager for the awardee with full authority to act on its behalf. Given that it is permissible for an agency to request that a bidder verify and provide evidence of the signatory's authority to bind the bidder, and the awardee's response which does not appear to be legally objectionable, this basis of protest is without merit. Southwest Maintenance Serv., B-258178, Dec. 15, 1994, 94-2 CPD ¶ 243 at 3.

The protester argues that the proposed awardee's bid cannot be accepted because at the time of bid opening the proposed awardee, a North Carolina LLC, did not have the appropriate licenses to do business in Tennessee. Because the RFP did not state specific state licensing requirements, the allegation concerning the awardee's possession of necessary business licenses concerns the agency's affirmative determination of responsibility, which we will not review under the circumstances presented here. Meridian Management Corp.; Consolidated Eng'g Servs., Inc., B-271557 et al., July 29, 1996, 96-2 CPD ¶ 64 at 7 n.4; Mid-America Management Servs., Inc., B-244103, June 5, 1991, 91-1 CPD ¶ 537.

The protest is denied.

Comptroller General
of the United States

¹Contrary to the protester's argument, the fact that the bid stated that the bidder was a limited liability corporation, as opposed to a limited liability company, is of no significance, given the other evidence that clearly identifies the bidding entity.