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Bidding On Baltimore City Contracts – Pay Attention to MBE/WBE Details

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General contractors must always pay close attention to details when submitting bids for local, state, or federal government contracts. This simple reminder, though, is easier said than done because of the last-minute rush that inevitably occurs in submitting a bid. For example, a general contractor may not be able to confirm its subcontractors' prices until just before the bid submission deadline, causing it to scramble to finalize its bid amount.

This last-minute rush can cause a general contractor to make mistakes in its bid submission, which may lead the contracting authority to reject the bid as nonresponsive. Fortunately, for an apparent low bidder, if these errors are minor (meaning their significance as to the bidder's price, quantity, quality, or delivery are trivial), the contracting authority usually has discretion to waive the minor defects if it is in the government's best interest to do so.

One area, in particular, where bidders make mistakes is in completing Baltimore City participation forms for minority and women's business enterprise ("MBE/WBE") subcontracts. In Baltimore City, as part of its MBE/WBE bid package, a bidder must submit a Part B: MBE/WBE Participation Disclosure Form and a Part C: MBE/WBE and Prime Contractor's Statement of Intent Form. These two forms require a bidder to identify, among other things, each certified MBE/WBE to which it intends to award a subcontract, the dollar amount of the respective subcontracts, the percentage of the total contract amount that each subcontract represents, and the work/services to be performed or the materials/supplies to be furnished pursuant to each subcontract.

Unfortunately, for the apparent low bidder, errors in the Part B and Part C forms – even if they appear to be minor – have been used as grounds for the City of Baltimore Minority and Women's Business Opportunity Office ("MWBOO") to recommend to the contracting authority that the bid be rejected as nonresponsive.



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And in such cases, the contracting authorities routinely defer to MWBOO's decisions, with the result being that an otherwise clean low bid is rejected.

This result is unfortunate, even given Baltimore City's stated purpose of "encouraging full and equitable participation by [MBE/WBEs] in the provision of goods and services to the City on a contractual basis" in order "to overcome the effects of past discrimination and to prevent ongoing discrimination in the City's contracting process." See Baltimore City Code § 28-3(a) and (b). MWBOO's intolerance for defects, regardless of how minor they may be, requires a prospective bidder to make sure that its Part B and Part C forms are flawless.

MWBOO's conduct encourages bid protests. Contractors will scramble to be awarded scarce contracts by combing through competitor's MBE/WBE bid documentation, and will file a bid protest, no matter how trivial the error. As a result, avoidable errors in MBE/WBE forms can – and do – sabotage otherwise responsive bids.

Given this reality, there are several areas in the City of Baltimore's MBE/WBE documentation where a prospective bidder must pay particular attention to details. Three such areas are as follows. First, a bidder must be sure that every MBE/WBE included in its Part B and Part C forms is certified by MWBOO for the type of work that the MBE/WBE intends to perform. This certification is required before bid opening, and the failure to comply will result in the dollar amount listed for the non-certified subcontractor being deducted from the bidder's overall utilization goal. See Baltimore City Code § 28-76(b).

Second, a bidder must be sure that it is counting the correct percentage of a particular MBE/WBE subcontract amount towards its overall utilization goal. There are various provisions in sections 28-31 to 28-45 of the Baltimore City Code that set forth what percentage of a proposed MBE/WBE subcontract amount may be counted towards the overall utilization goal. For example, if the MBE/WBE is a non-manufacturing supplier, only 25% of the intended contract amount may be counted. However, if that supplier warehouses the goods to be supplied, then 100% of the intended contract amount may be counted. See Baltimore City Code § 28-37.

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Third, a bidder must be sure that the dollar amount listed for a particular MBE/WBE subcontractor on the Part B form equals the amount listed for that subcontractor on the Part C form. A discrepancy in the two forms will raise questions about what amount the bidder truly intended to contract for with the MBE/WBE – questions that can cause an otherwise flawless bid to be rejected.

Therefore, while it is easier said than done in the last-minute rush to meet a bid submission deadline, bidders must remember to pay careful attention to every single detail in their Baltimore City MBE/WBE documentation. Inadvertent errors, which may have gone unnoticed in better economic times, will not escape the competition's scrutiny and may serve as grounds to reject an apparent low bid.