



THE COMMONWEALTH OF MASSACHUSETTS
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February 19, 2016

Mr. Paul Hardiman, Jr.
Murphy Specialty, Inc.
158 Arlington Street
Boston, MA 02136

Marianne Greeno, Esq.
Deputy General Counsel
Department of Mental Health
25 Staniford St.
Boston, MA 02114

Re: Bid Protest, Repair of Fire Damper Deficiencies, Solomon Mental Health Center

Dear Mr. Hardiman and Attorney Greeno,

A hearing was held regarding the referenced matter on January 27, 2016, to determine whether a violation of the public bidding laws occurred when the Department of Mental Health ("DMH") accepted a bid from Unicon, Inc. ("Unicon") for the repair of fire dampers at the Solomon Mental Health Center (the "project"). The Protestor, Murphy Specialty, Inc. ("Murphy"), argues that the specifications require the general or prime bidders on the project to have five years of experience in smoke and fire damper system maintenance. Murphy points to the Bidders' Checklist, which called for the listing of experience *if required by the specifications*. Murphy also argues that the specifications require that the "project shall be supervised at all time by a technician who is a licensed sheet metal worker." [Bid form, section H]. Since Unicon does not have five years of experience in damper system maintenance, and is not a licensed sheet metal business, its bid must be rejected, Murphy argues.

DMH argues that the experience and license requirements can be met by the general bidder's subcontractor. Unicon's subcontractor, Cochrane Ventilation, Inc. ("Cochrane"), meets the experience and license requirements.

In the unique circumstances of this bid, I find that Unicon can rely on its subcontractor's experience and license. For that reason, the Protest is Denied.

There is no question that the specifications required the "bidder" to meet the experience and license requirements. The word "bidder" usually means the general or prime bidder. See *Siemens Building Technologies, Inc. v. DCAMM*, 439 Mass. 759, 765 (2003) (Paragraph E sub-sub-bidder is not a "bidder" for purposes of public bidding law).

In this unusual case, however, the bid form explicitly states that the sub-bid is referred to as the "bid." [Bid form section 1.1]. This makes the subcontractor a "bidder." As a "bidder," Cochrane can, and does, meet the experience and license requirements. There has been no violation of the public bidding laws, and the Protest is therefore Denied.

Very truly yours,



Deborah A. Anderson 6/16
Assistant Attorney General