

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
)
)
)
)
IN THE MATTER OF: BID PROTEST)
)
MELLOUL-BLAMEY CONSTRUCTION)
SC LTD)
v.)
CLEMSON UNIVERSITY)
)
INSTITUTE OF PACKAGING DESIGN)
& GRAPHICS)
STATE PROJECT H12-9849-GW)
_____)

**BEFORE THE CHIEF PROCUREMENT
OFFICER FOR CONSTRUCTION**

DECISION

CASE NO. 2008-003

**POSTING DATE:
NOVEMBER 8, 2007**

This matter is before the Chief Procurement Officer for Construction (CPOC) pursuant to a request from Melloul-Blamey Construction SC LTD under the provisions §11-35-4210 of the South Carolina Consolidated Procurement Code, for an administrative review on the Institute of Packaging Design & Graphics Bid (“the Project”) for Clemson University (Clemson). Melloul-Blamey protest Clemson’s posting of a Notice of Intent to Award a contract for construction of the project to THS Constructors, Inc. (THS). (A copy of this letter is attached as Exhibit “A”)

On October 29, 2007, pursuant to S.C. Code Ann. §11-35-4210(4) (Supp. 2006), the CPOC conducted an administrative review by hearing. At the hearing, attorney Robert A. DeHoll represented Melloul-Blamey, attorney Tom Dudley represented THS, and Mr. John McEntire represented Clemson. At the start of the hearing, Melloul-Blamey submitted into evidence Exhibit 1 containing seven documents tabbed 1 through 7 and THS submitted into evidence Exhibit 2 containing 16 documents tabbed 1 through 16. During testimony, Exhibits 3, 4, and 5 were admitted into evidence. At the start of the hearing, THS moved for dismissal of Melloul-Blamey’s protest as untimely. The CPOC reserved judgment on THS’s motion pending completion of the hearing on the merits. During the hearing, the CPOC took testimony from all parties. This decision is based on the evidence and testimony presented at the hearing.

NATURE OF THE PROTEST

On August 23, 2007, Clemson advertised for bids to construct the project. Clemson's solicitation required each bidder to list on their bids the subcontractors they would use for the heating, ventilation, and air conditioning (HVAC) work and for the plumbing work. On September 18, 2007, Clemson opened bids for construction of the Project. THS submitted the low bid and Melloul-Blamey submitted the second low bid. [Exhibit 1 Tab 3].

THS listed Southern Piping Co. (Southern) on the line in its bid for listing the HVAC subcontractor and on the line in its bid for listing the plumbing subcontractor. On September 20, 2007, prior to the award, THS e-mailed Clemson's project manager, Mr. Paul Borick, a letter requesting permission to substitute replacement subcontractors for Southern for both the HVAC and the plumbing. [Exhibit 2 Tab 9] In support of its request, THS stated that it listed Southern in its bid for both the HVAC and the plumbing because it thought Southern's bid day quote included both HVAC and Plumbing. THS further stated that after the bid opening, it was advised that Southern's quote included only the HVAC work, not the plumbing. THS's request identified proposed substitute subcontractors, subcontractors that had submitted bids to THS on bid day. Clemson took no formal action on THS's request.

On September 21, 2007, Clemson posted a Notice of Intent to Award a contract to THS. On September 28, 2007, Melloul-Blamey's attorney, Mr. John T. Crawford, Jr., mailed a letter to Mr. Borick, protesting Clemson's award to THS.

DISCUSSION

PROTESTANT'S POSITION

Melloul-Blamey protest the award on the grounds that THS's bid is non-responsive. Melloul-Blamey contends that THS's listed subcontractor for both HVAC and plumbing, Southern, did not bid or intend to perform the plumbing. Melloul-Blamey further contends that this listing of a subcontractor to perform the plumbing that did not bid or intend to perform the plumbing is the same as listing no subcontractor at all. Melloul-Blamey also argues that THS should not be allowed to provide substitute subcontractors to Southern for either the HVAC or the plumbing and that to do so will

promote bid shopping, the very thing the subcontractor listing requirement in the procurement code is intended to prevent.

RESPONDENT'S POSITION

At the opening of the hearing, THS moved for a dismissal of Melloul-Blamey's protest as untimely. THS noted that Melloul-Blamey e-mailed its protest to Mr. Borick at Clemson, not the CPOC as required by SC Code Ann § 11-35-4210(2)(b). Noting the date Melloul-Blamey sent its letter of protest to Clemson, THS argues that it was unlikely the CPOC received a copy of the protest from Clemson by 5 PM on October 1, 2007, the deadline for protesting and therefore, Melloul-Blamey's protest must be dismissed.

On the merits of the matter, THS argues that since it listed Southern for both the HVAC and Plumbing, its bid was responsive. THS further argues that three provisions in Section 11-35-3020(2)(b) allow it to make a substitution for Southern:

- 1) Section 11-35-3020(2)(b)(iii)(bb), which allows substitution "upon a showing satisfactory to the using agency by the contractor that the scope of work bid by a listed subcontractor did not include a portion of the work required in the plans and specifications, and *the exclusion is not clearly set forth in the listed subcontractor's original bid . . .*;"
- 2) Section 11-35-3020(2)(b)(iii)(cc), which allows substitution "upon a showing satisfactory to the using agency by the contractor that within four working days of the bid opening that the subcontractor was listed as a result of inadvertent clerical error;" and
- 3) Section 11-35-3020(2)(b)(iii)(hh), which allows substitution "upon mutual agreement of the contractor and subcontractor."

CPOC FINDINGS

THS Motion to Dismiss

Melloul-Blamey mailed its protest to Mr. Borick at Clemson on September 28, 2007. The following Monday, October 1, 2007, at 4:47:09 PM, Mr. Borick e-mailed a copy of Melloul-Blamey's protest to Mr. Gary Wolford in the Office of the State Engineer (OSE). [Testimony of Mr. Wolford and Exhibit 5] Mr. Wolford testified that he provided the CPOC with a copy of protest by placing it on his desk that same day. Mr. Wolford could not remember if the CPOC actually saw the copy Melloul-Blamey's protest that same day.

SC Code Ann § 11-35-4210(1)(b) gives an actual offeror aggrieved in connection with an intent to award the right to protest to the CPOC within ten days of the date of the posting of the Notice of Intent to Award. SC Code Ann § 11-35-4210(2)(b) states the protest must be in writing and must be received by the CPOC within the time limits specified in § 11-35-4210(1)(b).¹ In the case of Protest of R.E. Harrington Case No. 2000-11, the protestant delivered its written protest to the agency procurement officer listed on the invitation for bids. She forwarded the protest to the CPO within the prescribed time limit under the statute. The Panel found that this was sufficient to meet the requirements of statute because the CPO actually received the protest within the protest period. Here, THS addressed its written protest to Mr. Borick, the project manager listed on Clemson's invitation for bids. Mr. Borick delivered the protest to Mr. Wolford in the Office of the CPOC, and Mr. Wolford placed the protest on the CPOC's desk by the required deadline. This was sufficient to meet the requirements of Section 11-35-4210(1)(b) because the CPOC actually received the protest within the statutory period. For this reason, THS's motion to dismiss is denied.

¹ Clemson posted an outdated version of The Notice of Intent to Award that states:

"Any actual bidder, offeror, contractor or subcontractor who is aggrieved in connection with the intended award or award of this Contract may protest to the State Engineer in accordance with Section 11-35-4210 of the SC Code of Laws, as amended, within 15 days of the date the *Notice of Intent to Award* is posted."

In the event the CPOC did not receive notice of the protest within the statutory 10 days, Melloul-Blamey relies on the 15 days provided in the Notice of Intent to Award. The facts of this case do not require the CPOC to determine if Clemson's failure to use the correct Notice of Intent to Award overrides the requirements of SC Code Ann § 11-35-4210(1)(b) that the CPOC receive the protest within ten days after the posting of the Notice of Intent to Award.

RESPONSIVENESS

Melloul-Blamey argues that THS's bid, by listing Southern for the piping when Southern did not bid piping, was non-responsive. In support of this position, THS points to the bid form, page BF-2, which contains the following statements:

"LISTING OF PROPOSED SUBCONTRACTORS

1. A SUBCONTRACTOR is an entity who will perform work or render service
2. Any BIDDER responding to an *Invitation for Construction Bids* shall list in its bid the name of only those SUBCONTRACTOR(S) that will perform the work ...
4. BIDDER hereby acknowledges and agrees that any failure by BIDDER to list SUBCONTRACTORS in accordance with the requirements of the SC Code of Laws shall render the BID non-responsive."

Melloul-Blamey argues that since Southern did not bid the work, THS did not list a subcontractor who will perform the work in accordance with the instructions on the bid form. Melloul-Blamey further argues that note 4 of these instructions makes this failure an issue of responsiveness.

Prior to 1993, the Procurement Review Panel (Panel) issued a number of orders stating that a failure to list subcontractor in the manner required by law rendered a bid non-responsive.² In doing so, the Panel relied on SC Code Ann § 11-35-3020(2)(b)(ii) which stated that "failure to list subcontractors in accordance with this section ... shall render the prime contractor's bid unresponsive."

In 1993, the General Assembly amended § 11-35-3020(2)(b)(ii) to state, "Failure to complete the list provided in the invitation for bids renders the bidder's bid unresponsive." Thus, under the current statute, as long as the bidder lists a subcontractor in each space for listing a subcontractor, his bid is responsive. Protest of Brantley Construction Co., Inc., Case No. 1999-3.

THS listed Southern in the spaces on the bid form for listing the plumbing and HVAC subcontractors. Therefore, THS's bid was responsive under § 11-35-3020(2)(b)(ii). However, Melloul-Blamey argues that note 4 on page BF-2 of the bid form - by retaining the pre-1993 language of § 11-35-3020(2)(b)(ii) - imposes a stricter standard of responsiveness.

² In Re. Protest of ECB Construction Co., Inc., Case No. 1989-7; In Re. Protest of Tricon Associates, Inc., Case No. 1991-11; In Re. Protest of Pizzagalli Construction Company, Case No. 1991-8; In Re. Protest of Delta Industrial Electric Co., Inc., Case No. 1992-8(I).

A review of the State's standard bid form going back to before the 1993 amendments to the Procurement Code shows that the language of note 4 on page BF-2 has long been included on the standard bid form. Though the form has changed in format, the language in this note has not. In other words, the Office of the State Engineer failed to modify the standard bid form when the General Assembly changed the law and has been using outdated language in the bid form for well over a decade. Nonetheless, a review of Panel and CPOC decisions on the issue of subcontractor listings since and including the Brantley decision show that despite the language of the bid form both the Panel and the CPOC have treated the language of § 11-35-3020(2)(b)(ii) as controlling on this issue. Likewise, in this case, the CPOC finds that on its face, THS's bid was responsive and in accordance with § 11-35-3020(2)(b)(ii). The CPOC will not look beyond the face of the bid to the contractor's or subcontractor's intent to determine responsiveness.

SUBSTITUTION

On bid day, both THS and Melloul-Blamey sent representatives to Clemson. After sending their representatives to Clemson, estimators back at the offices of both contractors continued to take bids from subcontractors and to calculate the amount of their bids. Before the time for receiving bids passed, these estimators called their representatives at Clemson to tell them which subcontractors to list on their bids and what dollar amount to include for the lump sum amount of the bid.

As THS's representative, Mr. William Tony Masters went to Clemson to finalize and submit THS's bid. Mr. Tony Warren remained back at the office to review subcontractor bids after they came in and to call Mr. Masters with a final list of subcontractors to list in THS's bid. Mr. Warren testified that when he reviewed Southern's bid, he noted a statement in the "Exclusions" at the bottom of the bid that stated "Site utilities (Plumbing to 5'-0" out only)." Mr. Warren testified that he interpreted this language combined with the bid amount of \$959,000 to mean that Southern's bid included both plumbing and HVAC.

Mr. Warren apparently missed or ignored language in all caps in the body of Southern's proposal stating "TRADE(S) QUOTING: HVAC ONLY." Southern's bid further stated:

"SOUTHERN PIPING COMPANY is pleased to submit our Quotation on the subject project as follows:

IN REFERENCE TO THE FOLLOWING:
Drawings: M001 Through M600
Specifications: Division 15 HVAC Only"

[Exhibit 2 tab 5] Drawings M001 through M600 cover the HVAC only.

Shortly before the time for receiving bids, Mr. Warren called Mr. Masters and told him to list Southern for both the HVAC and Plumbing. Mr. Warren told Mr. Masters the bid amount to list in THS's bid which amount included a combined price for the HVAC and plumbing of \$959,000. During the bid opening, Mr. Masters became concerned when he realized that no other bidder had listed Southern for either HVAC or plumbing. Mr. Masters contacted Southern after returning to his office whereupon he learned that Southern's bid was for the HVAC only. Southern advised THS that they could not agree to perform both HVAC and plumbing for their HVAC price of \$959,000 and agreed with THS to withdraw their bid. [See Southern's bid withdrawal, Exhibit 2 Tab 8] THS then submitted its request to Clemson to substitute replacement subcontractors for Southern pursuant to SC Code Ann § 11-35-3020(2)(b)(iii)(bb) and (cc). Mr. Masters testified that before THS submitted this request for substitution to Clemson, it was THS's understanding (apparently based on conversations with Clemson) that Clemson would approve the request. Melloul-Blamey has protested the substitution.

As of the date of this opinion, Clemson has not granted, nor would it be proper for Clemson to grant, THS's request.³ Since there is no substitution for the CPOC to reject or approve, the CPOC must deny Melloul-Blamey's request.

³ In a previous case involving the subcontractor substitution provisions of § 11-35-3020(2)(b)(iii), the Panel stated that these provisions only apply when "a change in conditions occurs" after contract award. Protest of Protest of Pizzagalli Construction Company, Case No. 1991-8; see also Protest of ECB Construction Company, Inc., Case No. 1989-7 and Protest of Delta Industrial Electric Co., Inc. Case No. 1992-8(l). Our state's Supreme Court, in Ray Bell Construction Company, Inc. v. The School District of Greenville County 331 S.C. 19, 501 S.E.2d 725 (1998), noted the goal underlying § 11-35-3020(2)(b) is to prevent bid shopping and peddling. The Court further stated that the subcontractor listing provisions must be interpreted in a manner consistent with this goal. The Panel's earlier decision in Pizzagalli did just that - by not allowing substitution when the facts and circumstances giving rise to the request for substitution arise prior to award (or the intent to award, as applicable).

Admittedly, § 11-35-3020(2)(b)(iii)(cc) allows substitution for an inadvertent clerical error in listing the subcontractor, a condition that will always occur before award. In the light of Pizzagalli and Ray Bell, the CPOC interprets this provision as a narrow exception to the general rule enunciated by the Panel in Pizzagalli that substitution is only allowed on facts arising after award. Though THS relies on this provision as one of the grounds for granting its request, the testimony at the hearing showed that THS did not list Southern as a result of a "clerical error." To the contrary, the evidence shows that THS, in the heat of preparing its bid, apparently failed to fully read Southern's clearly written quote.

Arguably, § 11-35-3020(2)(b)(iii)(bb) also provides an exception to the rule enunciated by the Panel in Pizzagalli. However, even if this is the case, it does not help THS. This section requires a showing that 1) the subcontractor's bid did not include a portion of the required work and 2) a showing that the exclusion was not clearly set forth in the subcontractor's original bid. THS attempt to make this showing failed because Southern's original bid clearly excluded plumbing.

The substitution by mutual agreement provision - § 11-35-3020(2)(b)(iii)(hh) – is perhaps the provision with the greatest potential for abuse if one rejects the Panels position in Pizzagalli. If a bidder can make a substitution for a listed subcontractor for any reason arising before award or no reason at all, so long as the contractor can obtain the subcontractor's agreement to the substitution, the policy against bid shopping is gutted. A prime contractor is always in a position of strength vis-à-vis a subcontractor. If a subcontractor declines to agree to a substitution the prime contractor may decline to list them on future projects. It is only by requiring substitution by mutual consent on facts arising after award that this potential for abuse may be avoided.

THS's bases its request for substitution on facts that occurred prior to award. Indeed, THS requested permission to make a substitution prior to award. Moreover, THS's request is not due to inadvertent *clerical* error. To allow substitution in the set of circumstances presented here is tantamount to saying a bidder may intentionally list subcontractors he does not intend to use, obtain relief through substitution, and subsequently shop bids; this a violation of the policy behind § 11-35-3020(2)(b). This is not to suggest that, in this case, THS did not intend to use Southern when it submitted its bid, nor is it to suggest THS intentionally listed Southern to manipulate the law. However, whether THS honestly misinterpreted Southern's bid, did not intend to manipulate the system, and did not shop bids, does not matter. Ray Bell at 731; Pizzagalli. What matters is whether allowing substitution in circumstances such as these presents the opportunity to intentionally violate the intent of the law and shop bids without ramifications.

When a bidder has submitted an erroneous bid, the bidder has a choice: either honor the bid as submitted or request permission to withdraw the bid. See, generally, SC Code Ann § 11-35-1520(7), SC Code Ann § 11-35-3020(2)(b)(v), and SC Code Ann Regs 19-445.2085. See also National Fire Insurance Company of Hartford v. Brown & Martin Co., 726 F. Supp. 1036 (D.S.C. 1989). Unless and until the CPOC is presented with a request to withdraw a bid, the CPOC declines to offer an opinion as to whether the facts of this case support a determination to grant such a request.

DECISION

It is the decision of the Chief Procurement Officer for Construction that the bid submitted by THS is responsive and that Melloul-Blamey's protest of a substitution regards something that has not yet occurred.

For the foregoing reasons Protest denied.



John St. C. White
Chief Procurement Officer
For Construction



Date

Columbia, South Carolina

STATEMENT OF THE RIGHT TO APPEAL

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision under subsection (4) of this section shall be final and conclusive, unless fraudulent, or unless any person adversely affected by the decision requests a further administrative review by the Procurement Review Panel under Section 11-35-4410(1) within ten days of posting of the decision in accordance with Section 11-35-4210(5). The request for review shall be directed to the appropriate chief procurement officer, who shall forward the request to the panel, or to the Procurement Review Panel and shall be in writing, setting forth the reasons why the person disagrees with the decision of the appropriate chief procurement officer. The person may also request a hearing before the Procurement Review Panel.

Additional information regarding the protest process is available on the internet at the following web site:
www.procurementlaw.sc.gov

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 66.1 of the 2005 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410(4). . . . Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2005 S.C. Act No. 115, Part IB, § 66.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, a business must retain a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003). Copies of the Panel's decisions are available at www.state.sc.us/mmo/legal/paneldec.htm

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Practicing Attorney in South Carolina

September 28, 2007

Clemson University
Attn: Paul Borlick, Project Manager
191 Old Greenville Hwy, Gentry Hall
Clemson, SC 29634

Re: Project: Bid on Institute of Packaging Design and Graphics
Project No: H12-9849-GW
Notice of Bid Protest

Dear Mr. Borlick:

Please consider this notice that Melloul-Blamey Construction as apparent second low bidder on the above referenced project, protests the Notice of Intent to Award the project to THS Contractors dated September 21, 2007 and received by Melloul-Blamey on September 26, 2007.

Factual Basis of Protest

On August 21, 2007 Clemson submitted an invitation for Bids (IFB) for the above project. The IFB included AIA A701-1997 Instruction to Bidders and Standard Supplemental Instructions to Bidders (SE-310) and Bid Form (SE-330). Bids were opened on September 18, 2007. THS was the apparent low bidder at \$5,045,000.00. Melloul-Blamey was the second lowest bidder at \$5,297,000.00. THS listed Southern Piping Co. as its subcontractor for plumbing. However, Southern Piping Co. did not provide a bid to THS nor did THS intend to use Southern Piping Co. for plumbing. Apparently, subsequent to bid opening, THS requested to substitute Southern Piping Co. with Sareault Plumbing for the plumbing. THS also requested to substitute Southern Piping Co. with Benjamin's Heating and Cooling as the HVAC contractor. Melloul-Blamey understands that the benefit to THS is that instead of a bid costs of \$900,000.00 from Southern Piping Co. for the HVAC, THS will be able to use Benjamin's bid which ws \$200,000.00 lower and THS will now be able to use Sareault Plumbing even though it did not list a subcontractor who bid on the plumbing and was intended to do the work in violation of the Bid document.

GREENVILLE
704 East McBee Avenue ■ Greenville, South Carolina 29601
Phone 864.242.4899 ■ Fax 864.242.4844
CHARLESTON
534 B Oristo Ridge ■ Edisto Beach, South Carolina 29438
Phone 843.869.1000
ATLANTA
2775 Cruse Road ■ Suite 201 ■ Lawrenceville, Georgia 30044
Phone 770.923.9609 ■ Fax 770.638.3239

Basis of Protest

THS's bid is unresponsive. Further, THS should not be allowed to obtain a competitive advantage over other bidders by substituting contractors. The Bid Form specifically states "any failure by Bidder to list subcontractors in accordance with the requirements of the SC Code of Laws shall make the Bid non-responsive. Clearly, THS's failure to list a subcontractor "that will perform the work" as required by the Bid Form renders THS's bid unresponsive. It is undisputed that Southern Piping Co. did not bid the plumbing work to THS or any other bidder. The fact that THS apparently requested to substitute Southern Piping Co. is evidence that Southern Piping Co. was not a subcontractor as defined by the Bid Form. Therefore, THS failed to list subcontractors in accordance with the SC Code of Laws. Our Supreme Court has noted that the listing of subcontractors is not a minor informality that can be waived. Ray Bell Construction Company, Inc. v. School District of Greenville, 331 SC 19, 501 SE2d 725, at 732-733 (1998). See also S.C. Code Section 11-35-3020 (2)(b)(ii).

It is not necessary for actual bid shopping to be proven, the opportunity is sufficient to render a bid unresponsive. Ray Bell supra at 731-732. THS, it appears, actually bid shopped and benefitted financially from its own failure to comply with the Bid Documents. Upon information, THS has been allowed to substitute two subcontractors without a satisfactory showing. THS was allowed to benefit from its failure to comply with subcontractor listing by being allowed to use Sareault Plumbing. Further, it is understood that THS has been allowed to substitute Southern Piping Co. for Benjamin's Heating and Cooling for the HVAC. This cost savings to THS is over \$200,000.00. This puts THS at an unfair competitive advantage in violation of the Procurement Code.

Melloul- Blamey has requested a copy of THS's request to substitute subcontractors pursuant to 11-35-3020 (0) (iii) to determine if THS's written request was timely and contained sufficient basis to justify substitution. Also, the chief procurement officer for Clemson, must have made a written determination of appropriations to justify THS correction to it bid. SC Code 11-35-1520 (7). Melloul-Blamey has requested this information from Clemson, but has not received it. The absence of these documents would be further grounds to reject THS's bid. Even if the above requested documents exists there is no basis to allow THS to overcome its failure to adhere to the Bid Form.

Requested Relief

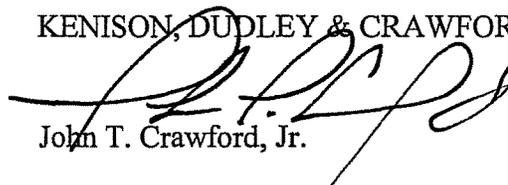
Melloul-Blamey's bid is responsive and its bid is second low. Melloul-Blamey asserts that THS's bid is unresponsive, no justification exist for allowing substitution of subcontractors and THS's error is not waiveable. Melloul-Blamey requests that THS's bid be rejected and a notice of Intent to Award be issued naming Melloul-Blamey as the successful bidder.

If you have any questions, please feel free to contact us.

With best regards,

Very truly yours,

KENISON, DUDLEY & CRAWFORD, LLC

A handwritten signature in black ink, appearing to read 'J.T. Crawford, Jr.', written over a horizontal line.

John T. Crawford, Jr.