



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Carpenter's Pole & Piling

File: B-280267

Date: July 17, 1998

Preston Carpenter for the protester.
Laurie Ristino, Esq., Department of Agriculture, for the agency.
Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest alleging that a bid on a timber sale should have been rejected because it did not contain required information certifying whether or not the bidder has participated in previous contracts subject to a provision of an executive order concerning nondiscrimination in employment by government contractors and whether or not the firm has submitted required compliance reports under those contracts, is denied where the information did not relate to the bidder's performance obligation and therefore could be furnished at any time prior to award.

DECISION

Carpenter's Pole & Piling protests the acceptability of a bid submitted by DeSoto Logging, Inc. for Compartment No. 58 Timber Sale, offered by the DeSoto Ranger District, in the DeSoto National Forest. The protester alleges that the Forest Service improperly allowed DeSoto Logging to furnish, after bid opening, required information concerning whether or not the firm has participated in previous contracts subject to a provision of an executive order concerning nondiscrimination in employment and whether or not the firm has submitted required compliance reports under those contracts.

We deny the protest.

The Forest Service received sealed bids from Carpenter's Pole & Piling and DeSoto Logging by the time set for bid opening on June 4, 1998. Upon review of the bids, the Forest Service found that DeSoto Logging, which had submitted the high bid, had failed to complete a portion of the bid under the heading "BIDDER INFORMATION REQUIREMENTS," which required bidders to certify whether or not they have participated in a previous contract subject to section 202 of Executive Order No. 11,246, 3 C.F.R. 167, 168 (1965) (concerning nondiscrimination in employment by government contractors), and whether or not the firm has submitted required compliance reports under those previous contracts. The Forest Service

nevertheless accepted DeSoto Logging's bid and allowed the firm to provide the required information prior to award, determining that the failure to submit the certification did not render the bid nonresponsive.

Generally, a bid on a timber sale with a material omission cannot be corrected after bid opening; such a bid is regarded as nonresponsive and must be rejected. D.M. Wilson Lumber, Inc., B-239136, Apr. 12, 1990, 90-1 CPD ¶ 386 at 1, recon. denied, B-239136.2, May 18, 1990, 90-1 CPD ¶ 489. However, not all information requested with a bid involves responsiveness; the information may relate to bidder responsibility, that is, the bidder's ability to perform, or may be required for the agency's own internal use. This type of information may be furnished after bid opening up to the time of award. Id.

The information involved here—whether the firm has participated in previous contracts subject to section 202 of the Executive Order and whether it has submitted required compliance reports under those contracts—is not related to the bidder's performance obligation, but apparently is used by the Forest Service internally to monitor its sales programs. Since the information does not involve the bidder's obligation to perform, DeSoto Logging's failure to furnish the information by bid opening did not render its bid nonresponsive, and the firm was not precluded from furnishing the certification after bid opening. Id.

Nevertheless, the protester contends that the bid form's language, which indicated that bids that did not include this information would be rejected, made this requirement a matter of responsiveness. A requirement, such as the one here, essentially concerning the submission of information unrelated to the material terms and conditions of the solicitation and, thus, unrelated to the bidder's performance obligation, cannot be converted into a matter of responsiveness merely by solicitation terms requiring the furnishing of the information with the bid. Hurd Logging Co., B-245260, Dec. 13, 1991, 91-2 CPD ¶ 542 at 2.

The protest is denied.

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