

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-221348

DATE: May 14, 1986

MATTER OF: Spectrum Associates, Inc.

DIGEST:

Although the protester alleges that its low bid was incomplete because the agency failed to furnish it with a complete solicitation package, the award was properly made to another bidder, since the record does not establish that the agency failed to furnish a complete package.

Spectrum Associates, Inc., protests the rejection of its bid under invitation for bids (IFB) No. DAAE07-85-B-B044, a total small business set-aside for dust detector kits consisting principally of a differential pressure switch. The IFB, which was issued by the United States Army Tank-Automotive Command, specified that the choice of the differential pressure switch to be included in each kit was restricted to products of approved sources. The Army rejected Spectrum's bid as nonresponsive because it failed to indicate that the protester would furnish supplies manufactured by a small business.

Spectrum complains that it was not furnished the portion of the solicitation containing the small business certificate and, thus, was prevented from submitting a complete bid. Spectrum, which is an approved source for the differential pressure switch, says it acted diligently in requesting the IFB, that the government mishandled its request, and that it is in fact a small business qualified to receive award. Asserting that its bid was otherwise responsive and low, Spectrum says it should be awarded the contract.

We deny the protest.

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As originally issued, the IFB sought bids on 189 dust detector kits and set bid opening for September 27, 1985. A series of five amendments increased the number of kits to be purchased to 1,172, extended the bid opening date several times, and added Spectrum as an approved source. Nine bids were opened on November 8. Spectrum submitted the low bid.

It is not disputed that Spectrum made several attempts to obtain a copy of the IFB following its recognition as an approved source. Initially, sometime in early October, Spectrum requested a copy from the contract specialist assigned to handle this procurement. The contract specialist informed Spectrum that she did not have copies of the solicitation. She advised Spectrum to contact the Army's document distribution branch in writing or by leaving a message on its telephone answering system. Following this advice, Spectrum called the document distribution branch and left a message requesting the solicitation package. Spectrum's request, however, was not filled because the document distribution branch was unable to identify the solicitation.

The record also shows that Spectrum again contacted the contract specialist when it had not received the solicitation by October 25. This time, the contract specialist contacted the document distribution branch herself. Document distribution began processing the request on October 28; a package was mailed to Spectrum on November 2. According to Spectrum, the package, which it received on November 4, contained only copies of the solicitation amendments. On November 5, Spectrum executed the documents it had and mailed them to the Army. The Army received the package on November 7, the day before bid opening.

The Army rejected Spectrum's bid as nonresponsive because the protester did not expressly bind itself to comply with the material terms and conditions of the original solicitation that were not repeated in the amendments. In support of its position, the Army cites Jones Floor Covering, Inc., B-213565, Mar. 16, 1984, 84-1 CPD ¶ 319, and asserts that, because Spectrum did not submit a Standard Form 33 (SF 33) and related forms, it did not offer to comply with the provisions contained in or incorporated by those forms, including the small business size status certificate.

We agree with the Army that Spectrum is not entitled to a contract based on its submission of the amendments as its bid. A bidder who completes and returns only some

of the solicitation documents must do so in a form that will result in a binding obligation to perform all of the material requirements set out in the IFB. Jones Floor Covering, Inc., B-213565, supra. This includes completing that portion of an applicable small business size status clause that requires an offeror to agree that the manufacturer will be a small business. See Mechanical Equipment Co., B-220380, Nov. 1, 1985, 85-2 CPD ¶ 506.

Moreover, there is no indication in the record that the protester tried to call the contract specialist when the allegedly deficient solicitation package was finally received. Because Spectrum did not place such a call, its version of the pertinent events is undermined. It is, for example, possible that Spectrum received the missing materials, itself mislaid them, and only when it could not find them later, concluded that they must not have been received.

Six responsive bids were received; the apparent awardee's bid is only slightly higher than Spectrum's price. Taking all these circumstances into consideration, we do not believe there is sufficient basis to justify cancellation and resolicitation of this requirement after bids have been exposed.

The protest is denied.

for *Seymour Efron*
Harry R. Van Cleve
General Counsel