



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Inland Service Corporation

File: B-242993

Date: June 25, 1991

John M. Taffany, Esq., Bailey & Shaw, for the protester.
James W. Mullinax for Livingston Specialties, Inc., an interested party.
Lester Edelman, Esq., and Beth Kelly, Esq., Department of the Army, for the agency.
Katherine I. Riback, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Contracting officer properly added requirement for Certification of Procurement Integrity to invitation for bids prior to reinstatement of statutory requirement for such certification, since bid opening and contract award would occur after the effective date of the statute requiring certification.
2. Protester's argument that it was misled by a provision in invitation for bids stating that offerors may be required to execute certificates relating to business integrity is denied because it ignores the language set forth in amendment No. 0002, which states that bidders are required to submit a signed Certificate of Procurement Integrity with their bids.
3. Bidder's failure to complete solicitation's Certificate of Procurement Integrity renders its bid nonresponsive since completion of the certificate imposes material legal obligations upon the bidder to which it is not otherwise bound.

DECISION

Inland Service Corporation protests the rejection of its bid as nonresponsive for failure to include a signed Certificate of Procurement Integrity as required by invitation for bids (IFB) No. DACW43-91-B-0218, issued by the United States Army Corps of Engineers.

We deny the protest.

OSMA/144259

The solicitation, issued November 8, 1990, was for cleaning services, pest control, turf management, solid waste removal and vegetation control, at Lake Wappapello, Wappapello, Missouri. Section K.3 of the solicitation entitled: "Certificate of Contractor Business Integrity and Ethics," stated that "apparently successful offeror(s) as a condition for award of any contract resulting from this solicitation may be required to execute a certificate related to business integrity." Amendment No. 0002 to the solicitation, issued on November 29, incorporated into the solicitation the Requirement for Certificate of Procurement Integrity (Sept. 1990) clause as set forth at Federal Acquisition Regulation (FAR) § 52.203-8, which included the certification and advised bidders that the "[f]ailure of a bidder to submit the signed certificate with its bid shall render the bid nonresponsive." The certificate, as incorporated into the IFB, provided space for listing violations or possible violations of certain provisions of the Office of Federal Procurement Policy Act (OFPP Act); it did not, however, provide space for the bidder's signature or identify where the bidder should sign the certificate.

On the bid opening date three bids were received; Inland submitted the apparent low bid. The contracting officer notified Inland by letter dated February 12, 1991, that its bid had been rejected as nonresponsive due to its failure to submit a signed Certificate of Procurement Integrity. Inland had signed amendment No. 0002, but had failed to sign or make any other notation on the Certificate of Procurement Integrity. On February 14, the contracting officer awarded the contract to Livingston Specialties, Inc., the next low bidder.

Inland argues that its bid should not have been rejected because of its failure to submit a signed or completed Certificate of Procurement Integrity. The protester maintains that the Certificate of Procurement Integrity was improperly included in the IFB because the certification requirement, which is contained in section 27 of the OFPP Act, was suspended by the Ethics Reform Act of 1988 and the suspension was to last until November 30, 1990, while the IFB was issued on November 8. In the alternative, Inland contends that if the Certificate of Procurement Integrity belonged in the IFB, the Army erred by including an outdated version of the clause in amendment No. 0002. Inland also argues that it was misled into thinking that the certification in amendment No. 0002 was for "informational purposes" because section K.3 of the IFB stated that offerors "may" be required to execute a certificate related to business integrity. Finally, Inland argues that the submission of a signed Certificate of Procurement Integrity is a matter of responsibility, not responsiveness.

We have carefully considered all of Inland's arguments and for the reasons set forth below we think that the certification was properly in the IFB and that Inland's bid was properly rejected as nonresponsive for its failure to include a completed and signed certification.

First, the certification requirements in the OFPP Act were reinstated on December 1, 1990. After that date, the agency was barred from awarding any contract valued at more than \$100,000 without the accompanying Certification of Procurement Integrity. 41 U.S.C.A. § 423(e)(1) (West Supp. 1990). Since the original bid opening was not scheduled until December 11, the contracting officer properly amended the solicitation to include the certification requirement.

Second, while it is true that the agency did incorporate a version of the certificate that had been superseded, the more current version of the certificate merely eliminated the need for bidders to certify compliance with section 27(f) of the OFPP Act, which prohibits former government employees who worked on a particular procurement from knowingly participating in the award, modification or extension of a contract for such procurement. Bidders were still required to certify to the other requirements, such as that all individuals involved in the preparation of the bid will report any information concerning a possible violation of the OFPP Act to the officer or employee signing the certification. Therefore the fact that the Army did not include the most current version of the Certificate of Procurement Integrity did not relieve Inland from its obligation to complete and sign the Certificate of Procurement Integrity included in Amendment No. 0002.

Third, Inland's argument that it was misled into thinking that the Procurement Integrity Certification in amendment No. 0002 was informational, by the statement in section K.3 of the IFB that offerors "may" be required to execute a certificate related to business integrity, is not persuasive. This argument is at odds with the text of the certificate and the instructions in amendment No. 0002 for completing the certificate which warned bidders that the failure to submit a signed certificate with the bid would render it "nonresponsive."

Finally, we disagree with Inland's position that its failure to include a completed and signed Certificate of Procurement Integrity is a matter of responsibility. In a recent decision, Mid-East Contractors, Inc., B-242435, Mar. 29, 1991, 91-1 CPD ¶ 342, we held that the certification requirement, which imposes substantial legal obligations on the contractor, is a material solicitation term and, thus, a matter of bid responsiveness.

Since Inland did not provide any of the required information and failed to submit a signed, completed Certificate of Procurement Integrity, the agency properly rejected Inland's bid as nonresponsive.^{1/} Mid-East Contractors, Inc., B-242435, supra.

The protest is denied.


James F. Hinchman
General Counsel

^{1/} Although the text of the certificate incorporated into the IFB does not provide a distinct signature line, the facts differ from those in our recent decision in Shifa Servs., Inc., B-242686, May 21, 1991, 70 Comp. Gen. _____, 91-1 CPD ¶ _____ where we found that the failure to provide the signature line was a latent solicitation defect which misled bidders. Here, unlike in Shifa, the record clearly shows that Inland was not misled by the signature portion of the IFB certificate because the protester also failed to fill out the portion of the certificate where space was provided for either listing violations or possible violations of the OFPP Act or inserting the word "none" if such is the case. This mandatory portion of the certificate included in the subject IFB provides distinct lines for the bidder's information.