



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Touchstone Textiles, Inc.

File: B-243912

Date: July 24, 1991

Alvin J. Schifrin, Esq., for the protester.
Paul M. Fisher, Esq., Department of the Navy, for the agency.
Stephen J. Gary, Esq., and David Ashen, Esq., Office of the
General Counsel, GAO, participated in preparation of the
decision.

DIGEST

Protester's failure to comply with requirement in solicitation, for minor construction, alteration, and repair work, that a bid guarantee be submitted by the closing date for the submission of proposals, rendered the proposal unacceptable under Federal Acquisition Regulation § 28.101-4(b), where the award was made on the basis of initial proposals without discussions.

DECISION

Touchstone Textiles, Inc. protests the Department of the Navy's award of a contract to Intelcom Support Services, Inc., under request for proposals (RFP) No. N62755-90-R-2904, for minor construction, alteration, and repair work at various locations on the island of Oahu, Hawaii. Touchstone argues that the Navy incorrectly determined that its proposal was technically unacceptable under the solicitation evaluation criteria and for failing to provide the required bid guarantee.

We dismiss the protest.

The solicitation, issued in October 1990, provided that award would be made to the responsible offeror whose proposal, conforming to the RFP, was most advantageous to the government, price and other factors considered. The RFP advised that the government may award a contract on the basis of initial offers received, without discussions. The solicitation further provided that "the offeror . . . shall furnish a separate bid bond [or other acceptable bid guarantee] by the time set for opening of bids. Failure to do so may be cause for rejection of the bid."

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In response to the solicitation, the Navy received proposals from seven offerors; three of the proposals were found technically acceptable. Although Touchstone proposed the lowest price, its proposal was found technically unacceptable under all of the RFP's technical evaluation criteria. The agency subsequently found that it had made an error in its evaluation of proposals under one evaluation factor, "Small Disadvantaged Business Utilization," and reevaluated all initial proposals. The agency again found Touchstone's proposal unacceptable in all technical areas, and also noted that Touchstone had failed to submit the required bid guarantee. The reevaluation resulted in the addition of two other firms, including Intelcom, to the competitive range, which now consisted of five offerors whose proposals were considered by the Navy to be technically acceptable as submitted. The Navy then determined that award could be made on the basis of initial proposals, without discussions (as provided for in the solicitation), and awarded the contract to Intelcom, which was the low, technically acceptable offeror.

In its protest of the award, Touchstone argues that the agency improperly found its proposal unacceptable under the factor for utilization of small disadvantaged business concerns, and applied other evaluation criteria in a manner that unfairly favored those offerors which exceeded the specification requirements at a correspondingly greater cost to the government. According to Touchstone, it proposed only what the agency actually needed, and therefore should have been found technically acceptable. Touchstone also challenges the rejection of its proposal for failure to submit a bid guarantee; it argues that rejection was merely "discretionary with the contracting officer."

The issue of the bid guarantee is dispositive here. Contrary to the protester's assertion, Federal Acquisition Regulation (FAR) § 28.101-4(b) provides that:

"In negotiation, noncompliance with a solicitation requirement for a bid guarantee requires rejection of an initial proposal as unacceptable, if a determination is made to award the contract based on initial proposals without discussions, except in the situations described in paragraph (c) of this subsection when noncompliance shall be waived."
[Emphasis added.]

That is, rejection of a proposal for failure to include a required bid guarantee is mandatory, not "discretionary," where award is made on the basis of initial proposals and the cited situations do not apply. See also Consolidated Eng'g, Inc., B-228142.2, Jan. 13, 1988, 88-1 CPD ¶ 24 (the FAR requires the rejection of a bid or offer which fails to comply with a bid bond requirement where award is to be made on the basis of initial proposals). There is nothing in the record to indicate, and the protester does not assert, that any of the situations under paragraph (c) requiring waiver of noncompliance with a bid guarantee requirement are present here. See FAR § 28.101-4(c)(1)-(9). Further, the RFP permitted the agency to make award on the basis of initial proposals, and we find nothing else in the record that would render the agency's decision to proceed with such an award improper. The agency therefore properly rejected Touchstone's proposal based on the failure to include a bid guarantee.

Under our Bid Protest Regulations, 4 C.F.R. § 21.0(a) (1991), a protester must be an "interested party" before we will consider its protest. A protester is not an interested party if it would not be in line for award if its protest were sustained. Engineering Resources, Inc., B-241448.2, Feb. 25, 1991, 91-1 CPD ¶ 205. Since we have found that the agency properly rejected Touchstone's proposal based on the failure to include a guarantee, Touchstone would not be in line for award even if its remaining protest grounds were sustained. Touchstone thus is not interested to raise these additional grounds and we will not consider the protest further. Id.

The protest is dismissed.



John M. Melody
Assistant General Counsel