

Spiegel

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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Sunbelt Industries, Inc.

File: B-245244.2

Date: September 24, 1991

Charles R. Musgrave, III, for the protester,
Robert A. Spiegel, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

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

Sunbelt Industries, Inc. protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. 7FXI-K5-88-5329-S, issued by the General Services Administration (GSA), for abrasive blasting material. On September 17, 1990, GSA issued amendment No. 2 to the IFB, which incorporated the requirement for a Certificate of Procurement Integrity pursuant to Federal Acquisition Regulation (FAR) § 52.203-9. GSA rejected Sunbelt's bid as nonresponsive because the firm failed to submit with its bid a completed Certificate of Procurement Integrity at the time of bid opening as required by FAR § 52.203-9. Sunbelt objects to the rejection of its bid, arguing that it did not have to submit the amendment with its bid or, apparently in the alternative, that "Amendment 2 was filed as required." The protester also takes the position that if it failed to return the amendment, it was a minor informality which can be waived. The protester does not state that it filed a completed certificate with its bid.

We dismiss the protest.

Since the facts of this protest are essentially the same as those in LBM, Inc., B-243805, Apr. 12, 1991, 91-1 CPD ¶ 372, and Spence Bros., B-243766, May 2, 1991, 91-1 CPD ¶ 428, we resolve the protest without obtaining an agency report. See Bid Protest Regulations, 56 Fed. Reg. 3759 (1991) (to be codified at 4 C.F.R. § 21.3(m)).

As explained in LBM and Spence, the Certificate of Procurement Integrity imposes additional legal requirements upon the bidder that are materially different from those to which the bidder is otherwise bound, either by its offer or by law. In particular, the certificate implements several provisions of the Office of Federal Procurement Policy (OFPP) Act, 41 U.S.C. § 423 (West Supp. 1990). Those provisions prohibit activities that involve the solicitation or discussion of post-government employment, the offer or acceptance of a gratuity, and the solicitation or disclosure of proprietary or source-selection information.

The procurement integrity certification requirements obligate a named individual--the officer or employee of the contractor responsible for the bid or offer--to become familiar with the prohibitions of the OFPP Act, and imposes on the bidder and its representative a requirement to make full disclosure of any possible violations of the OFPP Act, and to certify to the veracity of any such disclosure. In addition, the signer of the certificate is required to collect similar certifications from all other individuals involved in the preparation of bids or offers. In this regard, the certifying individual attests that every individual involved in preparation of the bid or offer is familiar with the requirements of the OFPP Act. The certification provisions also prescribe specific contract remedies not otherwise available, including the withholding of profits from payments and the termination of errant contractors for default. See Mid-East Contractors, Inc., B-242435, Mar. 29, 1991, 70 Comp. Gen. ____, 91-1 CPD ¶ 342.

As a result of the substantial legal obligations imposed by the certification, omission from the bid of a signed Certificate of Procurement Integrity leaves unresolved the bidder's agreement to comply with a material requirement of the IFB. For this reason, a bidder's failure to timely complete and return the certificate is a material deficiency in a bid which requires that the bid be rejected as nonresponsive. See also FAR § 14.402-2(m). The late modification rules do not allow a bidder to cure a nonresponsive bid after bid opening. See LTT Constructors, Inc., B-229062, Nov. 13, 1987, 87-2 CPD ¶ 484.

As in LBM and Spence, Sunbelt failed to submit a completed Certificate of Procurement Integrity with its bid. Since the protester's bid does not represent, on its face, an unequivocal commitment to comply with the material obligations imposed by the certificate, and its failure cannot be cured by the untimely submission of a completed certificate, we find that its bid was properly rejected as nonresponsive by GSA.

While it is unfortunate that GSA did not discover the missing certificate until several months after bid opening, that has no impact on the legal validity of the agency's rejection of the bid.

The protest is dismissed.

A handwritten signature in black ink, appearing to read "John Brosnan", with a long horizontal flourish extending to the right.

John Brosnan
Assistant General Counsel