

Matter of: Turley Construction Company, Inc.

File: B-255872

Date: February 1, 1994

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DIGEST

Where bidder completed and signed procurement integrity certificate for contract modifications, but failed to sign required procurement integrity certificate applicable to the underlying contract, the bid must be rejected as nonresponsive because execution of only the certificate applicable to modifications that have not yet been issued does not bind the bidder to perform the underlying contract in accordance with the substantial legal obligations imposed by the certificate of procurement integrity.

DECISION

Turley Construction Company, Inc. protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. F34650-93-B-0039, issued by the Department of the Air Force for the repair and installation of taxiway-edge lighting at Tinker Air Force Base, Oklahoma. Turley argues that its failure to include a signed certificate of procurement integrity with its bid should not have caused the bid to be rejected, since the bid did include a signed procurement integrity certificate for contract modifications.

We deny the protest.

The solicitation was issued as a total small disadvantaged business set-aside on August 12, 1993. The IFB contained the full text of both the Certificate of Procurement Integrity and the Certificate of Procurement Integrity--

Modification clauses, set forth in Federal Acquisition Regulation (FAR) §§ 52.203-8 and 52.203-9, respectively, as required by FAR § 3.104-10. These clauses implement the Office of Federal Procurement Policy (OFPP) Act, 41 U.S.C. § 423(e) (1988 and Supp. III 1991), which precludes federal agencies from awarding a contract or modifying a contract, in excess of \$100,000, unless a bidder or offeror certifies in writing that neither it nor its employees has any information concerning violations or possible violations of the OFPP Act. The certification requires that the officer or employee responsible for the bid, offer or modification proposal become familiar with the prohibitions of the OFPP Act, and imposes on the contractor, or its representative, a requirement to make full disclosure of any possible violations of the OFPP Act, and to certify to the veracity of the disclosure. See Mid-East Contractors, Inc., 70 Comp. Gen. 383 (1991), 91-1 CPD ¶ 342.

The text of the procurement integrity clause, as set forth in FAR § 52.203-8, informs bidders that the signed and completed certificate must be submitted with the bid, and warns that "[f]ailure of a bidder to submit the signed certificate with its bid shall render the bid nonresponsive." The text of the procurement integrity clause for contract modifications, as set forth in FAR § 52.203-9, provides that the bidder agrees to execute the procurement integrity certificate for modifications "when requested by the [c]ontracting [o]fficer in connection with the execution of any modification of this contract."

At the September 13 bid opening, the Air Force received three bids, including the low bid of Turley and the next low bid of S Systems Construction. In its bid, Turley completed and signed the procurement integrity certificate required for contract modifications. However, while Turley completed the certificate of procurement integrity, it did not sign or date it. In accordance with FAR § 52.203-8, the contracting officer rejected Turley's bid as nonresponsive on September 28. Turley's agency-level protest of the rejection of its bid was denied on November 18, and this protest followed. While award was made to S Systems on November 22, performance of the contract has been suspended pending resolution of this protest.

The certification requirement of the OFPP Act, set forth in FAR § 52.203-8, imposes substantial legal obligations and is thus a material solicitation term and a matter of responsiveness. See Mid-East Contractors, Inc., *supra*. When the responsiveness of a bid is challenged, we review the bid to determine whether it represents an unequivocal commitment to perform without exception the requirements stated in the IFB so that the bidder will be bound to perform in accordance with all the material terms and conditions. Contech Constr. Co., B-241185, Oct. 1, 1990, 90-2 CPD ¶ 264. Because of the substantial legal

obligations imposed by the certificate (FAR § 52.203-8), and the express requirement for the certificate to be separately signed, a bid with an improperly executed certificate of procurement integrity is nonresponsive. See Bootz Distribution, B-251155, Feb. 10, 1993, 93-1 CPD ¶ 123; Consolidated Metal Prods., Inc., B-244543, July 15, 1991, 91-2 CPD ¶ 58.

Here, Turley completed the certificate of procurement integrity, but failed to sign and date it. While the failure to date the certificate of procurement integrity is waivable as a minor informality where the certification's applicability to a particular bid is clear, see C.B.C. Enters., Inc., B-246235, Oct. 31, 1991, 91-2 CPD ¶ 416, the absence of the signature on the certificate makes the bid nonresponsive. See, e.g., Bootz Distribution, supra; G. Penza & Sons, Inc., B-249321, Sept. 2, 1992, 92-2 CPD ¶ 147; Air Quality Control, Inc., B-248806; B-248806.2, June 2, 1992, 92-1 CPD ¶ 485.

Turley argues that its properly executed certificate of procurement integrity for contract modifications may properly substitute for a signed certificate of procurement integrity, since, in Turley's view, the clauses are identical. Turley's assertion that the two clauses are identical is incorrect. The certificate of procurement integrity clause, at FAR § 52.203-8, requires, at bid submission, an executed certificate as it relates to "this offer." In contrast, the procurement integrity clause for contract modifications, at FAR § 52.203-9, only requires that the bidder promise to execute a new certificate upon request of the contracting officer at the time of a "modification proposal." In addition, neither the IFB, nor the text of the procurement integrity clause or certificate, contemplates that a bidder will complete and sign the procurement integrity certificate for contract modifications until a proposal for contract modification is made. Dennis T. Hardy Elec., Inc., B-250497.2, Feb. 8, 1993, 93-1 CPD ¶ 488.

A bidder's premature execution of the procurement integrity certificate for contract modifications is not a substitute for a properly executed certificate of procurement integrity submitted with the bid. The text of the procurement integrity clause for contract modifications clearly states

¹This is consistent with the OFPP Act, as implemented by the FAR, which requires contractors, prior to a contract modification in excess of \$100,000, to certify in writing their familiarity with the requirements of the OFPP Act and to disclose any known violations of the Act. 41 U.S.C. § 423(e); FAR § 43.106.

that that certificate applies not to the submitted bid, but to a modification of a resulting contract. See FAR §§ 52.203-9(b), (c). In addition, the certificate itself asks for the signature of the individual responsible for the modification proposal, not the bid. Since this certification applies to a modification proposal which may or may not exist at some future date, and not to the bid, an executed procurement integrity certificate for contract modifications does not bind the bidder to perform in accordance with the substantial legal obligations imposed by the certificate of procurement integrity. Given the express requirement for the certificate of procurement integrity to be separately signed, the agency properly rejected Turley's bid as nonresponsive based on the absence of a signed certificate.

The protest is denied.

Robert P. Murphy
Acting General Counsel