



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Gammon Technical Products, Inc.
File: B-257497
Date: June 15, 1994

Sam Z. Gdanski, Esq., for the protester.

DIGEST

1. Where a statute precludes an agency from awarding a contract in the absence of a signed Certificate of Procurement Integrity, but the implementing regulations require a signed certificate be submitted with the bid and those regulations have been upheld by the courts, a bidder's failure to submit the required certificate with its bid may not be cured after bid opening.
2. Even though evidence of signatory authority may be provided after bid opening, a signature itself may not be provided after bid opening since bidders would then be allowed to choose to either make a bid responsive or nonresponsive.

DECISION

Gammon Technical Products, Inc. protests the rejection of its bid as nonresponsive under Department of the Army invitation for bids No. DAAK01-94-B-0045, for failure to sign the required Certificate of Procurement Integrity. Gammon argues that bid rejection was improper because the bid itself was signed and because the failure of the bidder to furnish a signed certificate with the bid may be remedied after bid opening.

There is no merit to these arguments. Accordingly, we dismiss the protest.

First, the submission of a signed bid does not satisfy the requirement to submit a signed certification. It is well-settled that an appropriate signature on the certificate itself is required to establish the bidder's intent to be bound to the provisions of the certificate. See Mid-East Contractors, Inc., 70 Comp. Gen. 383 (1991), 91-1 CPD ¶ 342; G. Penza & Sons, Inc., B-249321, Sept. 2, 1992, 92-2 CPD ¶ 147; Ed A. Wilson, Inc., B-244634, July 12, 1991, 91-2 CPD ¶ 53.

Second, it is also well-established that the failure to submit a signed certificate with the bid renders the bid nonresponsive; it cannot be cured after bid opening. Gammon asserts that this is inconsistent with the statutory requirement for the certificate, which provides only that an agency "may not award a contract" unless the bidder "certifies in writing." 41 U.S.C. § 423(e) (Supp. IV 1992). The Federal Acquisition Regulation (FAR), however, requires the certification to be furnished with the bid and explicitly states that a bid not accompanied by the required certification is nonresponsive. FAR §§ 3.104-9, 14.404-2(m), 52.203-8. The courts have held that this FAR implementation is not precluded by the statute and is a permissible implementation thereof, see S.J. Amoroso Constr. Co., Inc. v. U.S., 981 F.2d. 1073 (9th Cir. 1992); McMaster Constr., Inc. v. U.S., 23 Cl. Ct. 679 (1991), and we have held that the obligations imposed by the certification are material such that the failure of a bid to include a properly signed certificate indeed renders the bid nonresponsive. See, e.g., Mid-East Contractors, Inc., supra.

Gammon cites to several cases that permit evidence of the individual's authority to sign a bid or certificate to be furnished after bid opening and suggests that the "same line of thinking" should lead us to the conclusion that the signature itself may be furnished after bid opening. We allow agencies to consider evidence of a signatory's authority that is furnished after bid opening, see Schmidt Eng'g & Equip., Inc.; Defense Logistics Agency--Recon., B-250480.2; B-250480.3, June 18, 1993, 93-1 CPD ¶ 470, because we view the government as being adequately protected against a false disavowal of a signatory's authority or other fraudulent practices. See 49 Comp. Gen. 527, 529-530 (1970). There is no such protection, however, when a bid itself does not reflect the bidder's commitment to all the material solicitation requirements. In other words, the bidder may not be given the opportunity, after bid opening, to explain or remedy the bid defect because the government would have no recourse against the bidder regardless of whether the bidder chooses to cure the defect or allows it to remain; the bidder would have the unfettered choice, after bid opening, of remaining in the competition or abandoning its bid. To allow a bidder such "two bites at the apple" is inconsistent with the principles of competitive bidding. See 49 Comp. Gen. 801 (1966); 38 Comp. Gen. 532 (1959).

The protest is dismissed.



Ronald Berger
Associate General Counsel