



Decision

Matter of: P & R Roofing & Sheet Metal, Inc.

File: B-258388

Date: December 20, 1994

Greg Richardson and Paul W. Hoffman, Esq., for the protester.

Gerald P. Kohns, Esq., Department of the Army, for the agency.

Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where bid does not include required Certificate of Procurement Integrity, bidder is not committed to certificate's terms and bid must be rejected as nonresponsive.

DECISION

P & R Roofing & Sheet Metal, Inc. 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. DAKF23-94-B-0038, issued by the Department of the Army for the reroofing of 10 buildings at Fort Campbell, Kentucky. The protester contends that it included an executed certificate in its bid and that if the certificate is now missing, it must be because the contracting officer lost it. P & R asks that it be permitted to submit another certificate to replace the missing one.

We deny the protest.

The IFB included the provision at Federal Acquisition Regulation (FAR) § 52.203-8, "Requirement for Certificate of Procurement Integrity," which required that the certificate be completed by the officer or employee responsible for preparation of the bid. The IFB also advised that failure to submit the signed certificate with the bid would render the bid nonresponsive.

Seven bids were received by the August 29, 1994, bid opening date. As she opened each bid, the bid opening official

announced the bidder's name and address, its size status, whether or not it had acknowledged the amendments, whether or not a bond was present, the line item prices bid, and the identity of the apparent low bidder(s). The protester was the low bidder on three of the IFB's 10 line items. Following bid opening, the opening official carried all of the bids to her office and conducted an in-depth review of the bids in line for award. While reviewing the protester's bid, the opening official noticed that it did not contain a Certificate of Procurement Integrity. Although P & R's bid was firmly stapled together, the opening official searched through all the bid submissions and her work area to make certain that the certificate was not otherwise present. Since a Certificate of Procurement Integrity signed by the protester could not be located, P & R's bid was rejected as nonresponsive. On August 27, the agency awarded contracts to two other bidders.

P & R contends that its bid, as submitted, did include a signed Certificate of Procurement Integrity and that if the certificate is now missing, it must be because the opening official misplaced it. P & R's in-house counsel states that he personally saw that the certificate was properly signed and included as part of his firm's bid, and the firm's receptionist, who prepared the bid package for mailing, insists that she enclosed the certificate in the bid envelope. As further support for its position that the certificate was misplaced by agency officials after bid opening, P & R points out that the opening official did not note the absence of the certificate at the time of opening.² The protester asks that it be permitted to furnish a duplicate certificate to replace the missing one.

The Certificate of Procurement Integrity requirement, set forth at FAR § 52.203-8, implements section 27 of the Office of Federal Procurement Policy (OFPP) Act, 41 U.S.C. § 423 (1988 and Supp. V 1993), which bars agencies from awarding contracts unless a bidder or offeror certifies in writing that neither it nor its employees have any information concerning violations or possible violations of the procurement integrity provisions set forth elsewhere in the

¹The IFB provided for the evaluation of bids for multiple awards.

²We do not view the opening official's failure to note the absence of the certificate at the time of opening as evidence that the certificate was in fact present. The opening official did not review the bids to ascertain whether or not they contained properly signed certificates at the time of opening.

act. Shifa Servs., Inc., 70 Comp. Gen. 502 (1991), 91-1 CPD ¶ 483. As a result of the substantial legal obligations imposed by the certification, when a signed Certificate of Procurement Integrity is omitted from a bid, the bidder is not clearly bound to comply with a material requirement of the IFB; accordingly, a bidder's failure to submit a signed certificate with its bid is a material deficiency requiring that the bid be rejected as nonresponsive. Stamatis Lykos, B-257843, Nov. 14, 1994, 94-2 CPD ¶ 186.

Even if, as the protester argues, P & R did submit a certificate with its bid package and the agency was responsible for its loss, the protester still cannot prevail. Where a bidder has complied with the bid submission requirements of a particular solicitation, but some portion of the bid has been lost after receipt at the procuring activity, the general rule is that the bidder may not then submit what is purported to be a copy of that submission, as the award of a contract on the basis of self-serving statements as to the contents of the bid package initially submitted would not be consistent with the maintenance of the integrity of the competitive system. See Vereinigte Geb., B-252546, June 11, 1993, 93-1 CPD ¶ 454. Additionally, because the certifier's additional obligations are material, bidders may not be permitted to furnish completed certificates after bid opening since such action would prejudice the integrity of the competitive bidding system by giving an otherwise successful bidder an opportunity to walk away from a low bid. Stamatis Lykos, supra.

The protest is denied.

\s\ Paul Lieberman
for Robert P. Murphy
General Counsel