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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Progressive Forestry Services, Inc.

File: B-242834

Date: June 5, 1991

Robert Zaharie for the protester.
Dario D'Angelo, Forest Service, Department of Agriculture, for the agency.
Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Invitation for bids (IFB) is defective where the IFB's Certificate of Procurement Integrity clause failed to provide a signature line or directions as to the precise manner in which bidders were to certify compliance with the certification requirements, which reasonably misled the protester and other bidders to believe a separate signature on the certificate was not required.

DECISION

Progressive Forestry Services, Inc. protests the rejection of its bid as nonresponsive for failure to sign the Certificate of Procurement Integrity as required by invitation for bids (IFB) No. R6-18-91-504, issued by the Forest Service, Department of Agriculture, for tree planting services. Progressive contends that since the solicitation's Certificate of Procurement Integrity clause failed to provide a space for the certifier's signature, it complied with the bid requirement by completing the certificate and signing its bid.

We sustain the protest.

The IFB, issued on December 27, 1990, as a total small business set-aside, sought bids for six line items of tree planting in various locations in the Willamette National Forest. The IFB provided that the planting must commence within 30 days of the agency's notice that planting conditions were suitable and must be completed within approximately 45 days. Bidders were advised that multiple awards could be made.

The IFB contained the Certificate of Procurement Integrity clause, as set forth in Federal Acquisition Regulation (FAR) § 52.203-8, and advised offerors that the "[f]ailure of a bidder to submit the signed certificate with its bid shall render the bid nonresponsive." While the IFB certificate provided space for the name of the certifier and offeror and for listing violations or possible violations of the Office of Federal Procurement Policy Act, it did not provide a space for bidders' signatures or identify where bidders should sign the certificate.

Fifteen bids were received by bid opening. Progressive was the apparent low bidder for two line items. Progressive did not sign the certificate, although it otherwise completed the certificate. Of the 15 bids received, only 8 bidders submitted signed certificates.^{1/} The Forest Service rejected Progressive's bid as nonresponsive, and this protest followed. Contract awards and performance have not been stayed based upon the agency's written determination that performance of the contracts is in the government's best interest and that urgent and compelling circumstances would not permit the agency to await our decision. 4 C.F.R. § 21.4 (1991).

Progressive argues that it complied with the certification requirements by completing the certificate and signing its bid. The protester points out that the certificate provided no space for a signature nor stated where the certificate should be signed, and the protester believed that its completion of the certificate and signing of its bid demonstrated its intent to be bound by the certificate.

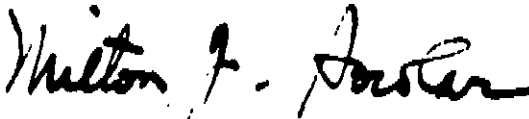
The certification requirement, which imposes substantial legal obligations on the contractor, is a material solicitation term and, thus, a matter of bid responsiveness. See Mid-East Contractors, Inc., B-242435, Mar. 29, 1991, 91-1 CPD ¶ _____. In a recent decision, Shifa Servs. Inc., B-242686, May 20, 1991, 91-1 CPD ¶ ____, we found that the failure of an IFB's Certificate of Procurement Integrity clause to provide a signature line or space for a signature, despite a parenthetical request for the "signature of the officer or employee responsible" for the certification, was a latent solicitation defect, which reasonably misled bidders regarding the certificate's separate signature requirement.

^{1/} The Forest Service states that some bidders contacted the agency prior to bid opening to inquire where the certificate should be signed.

Here, as in Shifa, the record shows that bidders were misled by the certificate's lack of a signature line or directions as to the precise manner in which bidders were to certify compliance with the requirements concerning procurement integrity. Of the 15 bidders, 7, including Progressive, completed the certificate, but otherwise failed to separately sign the certificate and were rejected as nonresponsive. As we stated in Shifa, we think that it is unreasonable to hold bidders responsible for creatively altering a solicitation provision, as here, to include their own signature line, in order to be found responsive. Thus, the IFB is defective since it did not reasonably disclose the manner by which bidders were to certify compliance with requirements concerning procurement integrity.

Ordinarily, we would recommend that the Forest Service cancel the IFB and resolicit the requirement to include a distinct signature line on the required Certificate of Procurement Integrity, making it clear to bidders that a separate signature was required. Shifa Servs., Inc., B-242686, supra. Here, however, because of the time critical nature in the planting of tree seedlings, the agency approved an urgency determination to allow for the award and performance of the tree planting contracts, which have been completed. Under the circumstances, the protester is entitled to recover its bid preparation costs and the costs of filing and pursuing its protest. 4 C.F.R. § 21.6(d). Progressive should submit its claim for such costs directly to the agency. 4 C.F.R. § 21.6(e).

We sustain the protest.

for 
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