



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

Decision

Matter of: General Kinetics Inc., Cryptek Division

File: B-244148

Date: August 19, 1991

David Cohen, Esq., Cohen & White, for the protester.
Riley Wilson for Video & Telecommunications, Inc., an interested party.
Louis A. De Leon, Esq., and Gregory H. Petkoff, Esq., Department of the Air Force, for the agency.
Susan K. McAuliffe, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Bid was properly rejected as nonresponsive where bidder submitted unsigned Certificate of Procurement Integrity with its bid submission even though bidder had completed various provisions of the certificate.

DECISION

General Kinetics Inc., Cryptek Division 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.F08602-91-B-0008, issued by the Department of the Air Force for facsimile machines and accessories.

We dismiss the protest.

The IFB, issued on February 13, 1991, contemplated the award of a 1-year requirements contract for an estimated 100 "Tempest" facsimile machines and related accessories. The solicitation incorporated the Certificate of Procurement Integrity clause, Federal Acquisition Regulation (FAR) § 52.203-8, as required by FAR § 3.104-10. This clause implements 41 U.S.C.A. § 423(e)(1) (West Supp. 1990), a statute that 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 Office of Federal Procurement Policy (OFPP) Act provisions set forth elsewhere in

41 U.S.C.A. § 423. The activities prohibited by the OFPP Act involve soliciting or discussing post-government employment, offering or accepting a gratuity, and soliciting or disclosing proprietary or source selection information. Under FAR § 52.203-8, bidders are to complete the certificate, where indicated, by identifying the individual certifier, providing the solicitation number and the name of the offeror, listing all violations or possible violations of the OFPP Act (or entering "none" if none exists), and signing the certificate. FAR § 3.104-9(b)(3) provides that for procurements using sealed bidding procedures, as here, a signed procurement integrity certification "shall be submitted by each bidder with the bid submission" FAR § 14.404-2(m) provides that "[a] bid shall be rendered nonresponsive and rejected if the bidder fails to submit the signed certificate . . . with its bid." Section K of the IFB similarly cautioned prospective bidders that the certification was a material representation of fact to be relied on in awarding the contract and that the failure of a bidder to submit the signed certificate with its bid by bid opening shall render the bid nonresponsive.

Eight bids were received by the March 25 bid opening date. Cryptek submitted the apparent low bid, but failed to submit a signed Certificate of Procurement Integrity with its bid. After bid opening, the protester submitted a signed replacement certificate. Cryptek's bid, however, was rejected by the Air Force, by letter of May 9, as nonresponsive. On May 21, Cryptek filed a protest with our Office challenging the rejection of its bid.

The protester contends that since it filled in the requested information in its Certificate of Procurement Integrity (i.e., it identified the person responsible for the preparation of Cryptek's bid, listed the solicitation number, provided the name of the offeror, and indicated that no OFPP Act violations exist), the certificate, although unsigned, is complete. As such, the protester claims that the certificate adequately demonstrates its intent to comply with the requirements stated in the certificate as well as those imposed by the OFPP Act, and that the signature on the front cover of its bid, which is the signature of the person identified on the certificate, should be sufficient to satisfy the "signed certificate" requirement. Cryptek essentially contends that its failure to submit a signature on its otherwise completed Certificate of Procurement Integrity is a minor informality which Cryptek should be allowed to cure prior to award.

The certification's requirements obligate a named individual-- the officer or employee of the contractor responsible for the bid--to become familiar with the prohibitions of the OFPP Act, and impose 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 that disclosure. In addition, the signer of the certification is required to collect similar certifications from all other individuals involved in the preparation of bids or offers. The certification provisions also prescribe specific contract remedies-- including withholding of profits from payments and terminating errant contractors for default--not otherwise available. These provisions, which impose substantial legal obligations on the contractor, are materially different from those to which the bidders otherwise are bound; accordingly, the requirement for a separate, signed and completed Certificate of Procurement Integrity, to be submitted with the bid submission, is a material requirement of the IFB that affects the bid's responsiveness. See Shifa Servs., Inc., B-242686, May 20, 1991, 70 Comp. Gen. ____, 91-1 CPD ¶ 483. We thus have found that a bid is properly rejected as nonresponsive for the bidder's failure to submit a signed Certificate of Procurement Integrity with its bid, even though the bidder signed its bid and acknowledged the amendment that added the certification requirement to the solicitation. Mid-East Contractors, Inc., B-242435, Mar. 29, 1991, 70 Comp. Gen. ____, 91-1 CPD ¶ 342.

Although Cryptek's certificate identifies the individual it considers responsible for the additional requirements imposed by the terms of the certificate, that individual did not clearly obligate himself to fulfill those requirements, as required, by signing the certificate. By the RFP, the applicable procurement regulations, and the terms of the certificate, the certifying individual was directed to sign the certificate, which provided a distinct signature line to be completed by the certifier. The individual's failure to do so calls into question the bidder's commitment to the certificate's stated requirements. Since the certifier's additional obligations are material, even though Cryptek provided the other required information on its unsigned certificate, we cannot consider the protester's failure to sign its certificate a minor informality capable of being cured after bid opening. See Envntl. Management Servs., B-244783, Aug. 1, 1991, 91-2 CPD ¶ ____; Ed A. Wilson, Inc., B-244634, July 12, 1991, 91-2 CPD ¶ _____. To do so would permit a bidder to decide after bid opening whether to comply

with a material term of an IFB, which strains the integrity of the competitive bidding system by giving otherwise successful bidders an opportunity to walk away from a low bid. See 38 Comp. Gen. 532 (1959).

The protest is dismissed.



Michael R. Golden
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