

GURCZYCKI

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

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Decision

Matter of: Triton Marine Construction Corporation
File: B-255373
Date: October 20, 1993

Thomas J. Mosele, Esq., Franklin, Mosele & Walker, P.C., for the protester.
Henry J. Gorczycki, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

A bidder's failure to submit with its bid specified preaward information to be used to determine the bidder's ability to perform the work solicited does not render the bid nonresponsive, even where the solicitation language makes submission of this information with bids mandatory, because this information is only related to bidder responsibility, which can be determined any time up to award.

DECISION

Triton Marine Construction Corporation protests the award of a contract to any other bidder under invitation for bids (IFB) No. DACW64-93-B-0036, issued by the Department of the Army, United States Army Corps of Engineers, for construction work on the Gulf Intracoastal Waterway in Matagorda County, Texas. Triton's protest is based on an IFB requirement that preaward information relating to a bidder's capability to perform the contract be submitted with the bid. Triton alleges that the two lowest priced bidders failed to submit this information with their bids and argues that these bids should thus be rejected as nonresponsive.

We dismiss the protest because the information in question relates to bidder responsibility which can be submitted anytime prior to award.

A bid is responsive as submitted when it offers to perform without exception the exact thing called for in the IFB, and acceptance of the bid will bind the contractor to perform in accordance with all the IFB's material terms and conditions. Stay, Inc., B-237073, Dec. 22, 1989, 89-2 CPD ¶ 586. Responsibility, on the other hand, refers to a bidder's apparent ability and capacity to perform all

contract requirements and is determined not at bid opening, but at any time prior to award based on any information received by the agency up to that time, Sage Assocs. Gen. Contractors, Inc., B-235497, Aug. 15, 1989, 89-2 CPD ¶ 141. It is well established that a requirement which relates to responsibility cannot be converted into a matter of responsiveness merely by the terms of the solicitation, 52 Comp. Gen. 389 (1972); Sage Assocs. Gen. Contractors, Inc., supra; Science Applications, Inc., B-193479, Mar. 8, 1979, 79-1 CPD ¶ 167.

Here, the IFB included Standard Form (SF) 1442, on the face of which appeared the following instruction:

"NOTE: PREAWARD INFORMATION, PAGE L-4,
PARA. L.10, IS DUE ON DAY OF BID OPENING[.]"

Paragraph L.10 on page L-4 of the IFB requested information which "will tend to show the bidder's ability to prosecute the [required] work." This information was to include the name and address of the office or firm which previously performed similar work, a list of key personnel and their qualifications, financial information of the bidder, and a list of present commitments under which the bidder is currently performing work. Thus, the preaward information requested is related to the general standards for determining a bidder's responsibility, Federal Acquisition Regulation (FAR) § 9.104-1, and, by the very terms of the IFB, is to be used to determine bidder responsibility. Under the circumstances, the bids which failed to include this information may not be rejected as nonresponsive. See 52 Comp. Gen. 389, supra; Sage Assocs. Gen. Contractors, Inc., supra; Science Applications, Inc., supra.

The protest is dismissed.



James A. Spargenberg
Assistant General Counsel