



Comptroller General
of the United States

Washington, D.C. 20548

1043162

Decision

Matter of: Sunrise International Group, Inc. and
Anderson Brothers Truck & Trailer Division,
a Joint Venture

File: B-255223

Date: February 16, 1994

Ray E. Baker for the protester,
Charles D. Shults, Esq., and Col. Riggs L. Wilks, Jr.,
Department of the Army, for the agency.
Carolyn D. Talley, Esq., and Guy R. Pietrovito, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Award in excess of \$100,000 was properly made to a bidder, which executed a certificate of procurement integrity clause after bid opening and prior to award, where the invitation for bids did not include the standard certificate of procurement integrity clause, requiring the submission of executed certificates with bids, because the government estimate for the requirement was less than \$100,000, and where the protester did not timely protest the failure of the solicitation to require the submission of certificates with the bids.

DECISION

Sunrise International Group, Inc. and Anderson Brothers Truck & Trailer Division, a Joint Venture, protests the award of a contract to Santee Modular Homes, Inc. under invitation for bids (IFB) No. DABT47-93-B-0055, issued by the Department of the Army for the repair, sandblasting, rustproofing and painting of government owned vehicles. Sunrise contends that the award to Santee is improper because Santee's bid did not include a completed certificate of procurement integrity.

We dismiss the protest.

Federal Acquisition Regulation (FAR) § 3.104-10(a) requires contracting officers to include the standard certificate of procurement integrity clause, as set out in FAR § 52.203-8, in all solicitations, where the contract is expected to

exceed \$100,000. This standard clause implements the Office of Federal Procurement Policy (OFPP) Act, 41 U.S.C. § 423 (Supp. III 1991), which precludes agencies from making an award in excess of \$100,000 to a competing contractor unless an officer or employee of the contractor responsible for the offer or bid certifies in writing that neither he nor those employees who participated in the preparation of the bid has any information concerning violations or possible violations of the OFPP Act. Where an IFB includes the standard certificate of procurement integrity clause, a bidder's failure to submit a properly executed certificate with its bid renders the bid nonresponsive to a material solicitation term. See Holly's Inc., B-246444, Mar. 4, 1992, 92-1 CPD ¶ 261.

The government estimate for this requirement was \$66,000. Because the resulting contract was not expected to exceed \$100,000, the Army did not include the certificate of procurement integrity clause in the IFB. See FAR § 3.104-10(a). Prior to bid opening, Sunrise asked the contracting officer why the IFB did not include the certificate of procurement integrity clause; the contracting officer explained the clause was not included in the IFB because the government estimate for this requirement was less than \$100,000. Sunrise was also informed that if the low responsive bid received in response to the IFB was greater than \$100,000, the agency would obtain a properly executed certificate prior to award, but that submission of a completed certificate at bid opening was not a solicitation requirement.

The Army received two bids at bid opening; Santee's low bid of \$177,860 and Sunrise's bid of \$185,854. Sunrise included a completed certificate of procurement integrity with its bid, although the IFB did not require the completion of the certificate. Santee's bid did not include the certificate. Prior to making award to Santee, the contracting officer obtained a properly executed certificate of procurement integrity from Santee.

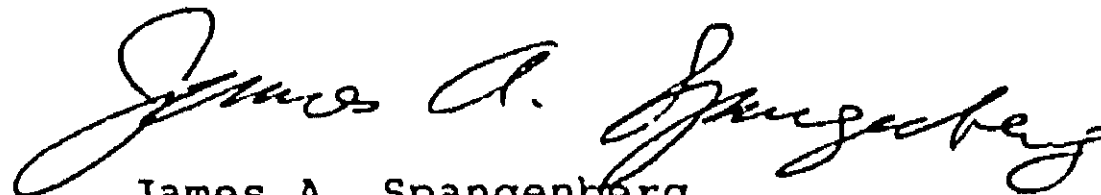
Sunrise protests that award to Santee is improper because Santee's bid, as submitted at bid opening, did not include a completed certificate of procurement integrity. The crux of Sunrise's protest is that, as evidenced by the two bids received that exceeded \$100,000, the IFB should have included the certificate of procurement integrity clause, requiring bidders to submit completed certificates with their bids.¹

¹Sunrise does not protest the reasonableness of Santee's bid price or the government estimate.

Our Bid Protest Regulations provide that protests of alleged apparent solicitation improprieties must be filed prior to bid opening. 4 C.F.R. § 21.2(a)(1) (1993); Manatts, Inc., B-237532, Feb. 16, 1990, 90-1 CPD ¶ 287. Here, Sunrise knew prior to bid opening that the IFB did not include a certificate of procurement integrity clause and that the government estimate for this requirement did not exceed \$100,000. Further, Sunrise knew before bid opening that the agency did not believe that bidders were required to submit a completed certificate of procurement integrity with their bids. Under these circumstances, Sunrise was required to protest the solicitation's lack of the standard certificate of procurement integrity clause before bid opening, and its post-bid-opening challenge to the solicitation is untimely.

Since the IFB did not require the submission of a completed certificate of procurement integrity with the bid, Santee's bid, which did not include a completed certificate, could not properly be rejected as nonresponsive to a material solicitation term.² The OFPP Act requires, however, that agencies may not award contracts in excess of \$100,000 without obtaining a properly executed certificate of procurement integrity. 41 U.S.C. § 423(e)(1). Since this was done here, we have no basis to question the agency's award to Santee.

The protest is dismissed.



James A. Spangenberg
Assistant General Counsel

²Bid responsiveness concerns whether a bidder has unequivocally promised to provide supplies and services in conformity with all the IFB's material terms and conditions. Ibex, Ltd., B-230218, Mar. 11, 1988, 88-1 CPD ¶ 257.