



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Technical Associate, Inc.

File: B-257804

Date: July 20, 1994

DECISION

Technical Associates, Inc. protests the award of a contract to Triad Metals International under solicitation No. DAAA09-94-B-0415 issued by the Department of the Army.

We dismiss the protest.

Technical Associates challenges the award on several bases. First, the protester alleges that since Triad did not sign and return amendment No. 3 to the solicitation, Triad's bid should be determined nonresponsive and rejected.

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. Stav, Inc., B-237073, Dec. 22, 1989, 89-2 CPD ¶ 586. Therefore, a bidder's failure to acknowledge a material amendment must be rejected as nonresponsive. On the other hand, a bidder's failure to acknowledge an amendment which is not material can be waived as a minor informality. Federal Acquisition Regulation (FAR) § 14.405; DeRalco, Inc., 68 Comp. Gen. 349 (1989), 89-1 CPD ¶ 347. An amendment is material when it imposes additional legal obligations on the bidder that were not contained in the original solicitation, or if it would affect price, quantity, quality, or delivery. FAR § 14.405(d)(2). In this case, amendment no. 3 only replicated a modification made by amendment no. 1, which Triad did in fact sign. Therefore, since amendment no. 3 did not impose any additional requirements on the bidders, a bidder's failure to acknowledge it does not require rejection of the bid.

The protester next contends that Triad may not meet the requirements of the Walsh-Healey Act. Our Office does not consider the legal status of a firm as a regular dealer or manufacturer under the Walsh-Healey Act. 4 C.F.R. § 21.3(m)(9). By law this matter is to be decided by the contracting agency, in the first instance, subject to review by the Small Business Administration, where a small business

is involved, and the Secretary of Labor. The Pratt & Whitney Co., Inc.; Onsrud Mach. Corp., B-232190; B-232190.2, Dec. 13, 1988, 88-2 CPD ¶ 588.

Technical Associates further alleges that the specifications were ambiguous. Our Bid Protest Regulations contain strict rules requiring timely submission of protests. These rules specifically require that protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening must be filed prior to bid opening. 4 C.F.R. § 21.2(a)(1); Manatts, Inc., B-237532, Feb. 16, 1990, 90-1 CPD ¶ 287. Accordingly, this allegation is untimely.

The protest is dismissed.



Ronald Berger
Associate General Counsel