



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter:** GE Power Generation

**File:** B-259189

**Date:** January 5, 1995

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### DECISION

GE Power Generation protests the award of a contract to Magnatek National Electric Coil under request for proposals (RFP) No. DACW01-93-R-0032 by the Department of the Army. GE contends that Magnatek's offer should have been rejected because certain certifications in its proposal were incomplete and because Magnatek falsely certified that it had not been terminated within a 3-year period when completing the RFP "Certification Regarding Debarment, Suspension, Proposed Debarment, and other Responsibility Matters," Federal Acquisition Regulation (FAR) § 52.209-5, which requires offerors to certify whether they or any of their principals have been debarred, suspended, or proposed for debarment or suspension, or indicted, civilly charged, convicted or found civilly liable for any of a number of enumerated offenses.

Magnatek's original certification did not include answers to questions at section (a)(1)(i) and indicated at section (a)(1)(ii) that it had been terminated for default within a 3-year period. This statement included a footnote explaining its answer which stated that its "termination was appealed. A mutually agreeable settlement was reached."<sup>1</sup> The agency then queried Magnatek on this matter. Magnatek responded, stating that it had completed and included its certification with its original submission but also providing a revised certification. The revised certification answered all the questions at section (a)(1)(i) and indicated at section (a)(1)(ii) that Magnatek had "not" been terminated within a 3-year period. Magnatek explained that it changed its certification because the 3-year period had now expired. The Army ultimately determined that Magnatek was a responsible contractor and made award to that firm.

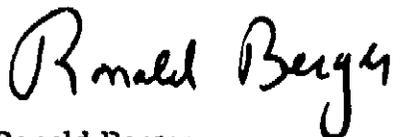
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<sup>1</sup>Department of Defense FAR Supplement § 209.406-1 allows an agency to enter into administrative agreements in lieu of termination or debarment where the agency, in its discretion, determines that such actions are not necessary to protect the government's interests.

The purpose of the certificate is to assist the contracting officer in determining an offeror's responsibility,<sup>2</sup> FAR § 9.408; Intermountain Elec., Inc., B-236953.2, Jan. 31, 1990, 90-1 CPD ¶143. The failure to properly complete the certification does not require the rejection of a proposal. Id. However, where an offeror has made an intentional misrepresentation that materially influences the agency's consideration of its proposal, the proposal should be disqualified and a contract award based upon the proposal canceled. Informatics, Inc., 57 Comp. Gen. 217 (1978), 78-1 CPD ¶ 53; Moorman's Travel Servs., Inc.—Recon., B-219728.2, Dec. 10, 1985, 85-2 CPD ¶ 643.

There is obviously no intentional misrepresentation here. Magnatek initially indicated that it had been defaulted within the previous 3 years but that a settlement had been reached. Magnatek's revised certification indicating that it had not been terminated within a 3-year period was based on its later submission and was accompanied by an explanation for the change. We fail to see how any of this involves a misrepresentation or misled the agency. See Universal Tech. Inc.; Spacecraft, Inc., B-248808.2 et al., Sept. 28, 1992, 92-2 CPD ¶ 212.

The protest is dismissed.



Ronald Berger  
Associate General Counsel

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<sup>2</sup>To the extent that GE contends that the Army's affirmative determination of Magnatek's responsibility was unreasonable, this is a matter not reviewable by our Office absent a showing of possible fraud or bad faith on the part of procurement officials, or that definitive responsibility criteria in the solicitation may have been misapplied. A determination that a bidder or offeror is capable of performing a contract is based, in large measure, on subjective judgments which generally are not susceptible to reasoned review. 4 C.F.R. § 21.3(m)(5); King-Fisher Co., B-236687.2, Feb. 12, 1990, 90-1 CPD ¶ 177.