



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Air Quality Control, Inc.

**File:** B-248806; B-248806.2

**Date:** June 2, 1992

Ralph E. Walden for the protester,  
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 bid without signed portion of Certificate of Procurement Integrity, even though the bidder had completed various provisions of the certificate.

### DECISION

Air Quality Control, Inc. protests the rejection of its bid as nonresponsive for failure to include the signed portion of its Certificate of Procurement Integrity as required by invitation for bids (IFB) No. DACA21-92-B-0025, issued by the Army Corps of Engineers for asbestos removal services.

We dismiss the protest.

The IFB incorporated the Certificate of Procurement Integrity clause, Federal Acquisition Regulation (FAR) § 52.203-8. This clause implements 41 U.S.C. § 423(e)(1) (Supp. I 1989), a statute that bars agencies from awarding contracts unless a bidder or offeror certifies in writing that neither it nor its employees has 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. § 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."

Air Quality Control, Inc. submitted the apparent low bid at bid opening on April 21. The protester included a portion of the certificate with its bid. The protester filled out the name of the certifier and solicitation number, but failed to submit with its bid the next page of the Certificate of Procurement Integrity which provided for the signature of the certifier to the OFPP Act obligations. The protester reports that it was advised by the Army on May 12 that its bid was rejected as nonresponsive. On May 26, Air Quality Control, Inc. filed a protest with our Office challenging the rejection of its bid.

The protester contends that it provided the requested information in its procurement integrity certificate and that the page of the certificate that included the required signature was inadvertently omitted from its bid submission. The protester contends that the signature on the front of its bid bound the firm to the terms of the Certificate of Procurement Integrity and satisfied the certificate's signature requirement. The protester asserts that acceptance of its low bid will save the government money.

The procurement integrity 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 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., 70 Comp. Gen. 502 (1991), 91-1 CPD ¶ 483.

By the terms of the IFB and the applicable procurement regulations, the bidder was directed to complete and sign the certificate. The failure to do so calls into question the bidder's commitment to the material requirements imposed

by the terms of the certificate. Since the certifier's additional obligations are material, we cannot consider the protester's failure to furnish a signed certificate with its bid a minor informality capable of being cured after bid opening. General Kinetics Inc., Cryptek Div., B-244148, Aug. 19, 1991, 91-2 CPD ¶ 166; Environmental Management Servs., B-244783, Aug. 1, 1991, 91-2 CPD ¶ 114. To do so would permit a bidder to decide after bid opening whether to comply with a material term of an IFB, which constrains 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). Further, the signature on the front of a firm's bid is insufficient to satisfy the requirement for a separate signature on the Certificate of Procurement Integrity. As stated above, the failure to furnish a signed certificate leaves unresolved the commitment of the individual who will be the focus for the OFPP Act's obligations. See General Kinetics Inc., Cryptek Div., supra. Accordingly, the protester's bid was properly rejected as nonresponsive.

The protest is dismissed.



Michael R. Golden  
Assistant General Counsel