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Comptroller General  
of the United States

United States Government Accountability Office  
Washington, DC 20548

## Decision

**Matter of:** Spotless Janitorial Services, Inc.

**File:** B-295620

**Date:** February 18, 2005

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J. Raymond Sparrow, Esq., for the protester.  
Patricia D. Graham, Esq., Department of Energy, for the agency.  
John L. Formica, Esq., and Jerold D. Cohen, Esq., Office of the General Counsel,  
GAO, participated in the preparation of the decision.

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### **DIGEST**

Agency properly rejected the protester's bid as nonresponsive where the bid, as modified, stated that it was proprietary and was not to be disclosed publicly.

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### **DECISION**

Spotless Janitorial Services, Inc. protests the rejection of its bid submitted in response to invitation for bids (IFB) No. DE-FB01-05ME66932, issued by the Department of Energy, for custodial work at the agency's Forrestal Building and adjacent child care center in Washington, D.C.

We deny the protest.

The IFB, issued electronically on the agency's Industry Interactive Procurement System (IIPS) web-site, sought bids for the performance of "custodial, snow removal, insect and rodent control, window washing, utility work and window blind cleaning services." IFB § B.1. The IFB provided that bids had to be submitted electronically through the agency's IIPS web site, with the exception of "[b]onds and other documentation that cannot be submitted electronically." Specific instructions for the preparation of electronic bids were included in the IFB, and the solicitation also directed bidders to the IIPS web-site where they could access the solicitation, register their firms, and access further instructions regarding submission of their bids. The solicitation, while specifying that bids had to be submitted electronically through the IIPS web-site, added that "bids may be modified or withdrawn by written or telegraphic notice." IFB §§ E.1., E.3.

The record reflects that Spotless responded to the solicitation through the IIPS website on the day before bid opening, and that three other firms responded to the IFB electronically by the time set for bid opening. According to the agency, while it received complete bid submissions through the IIPS from the three other bidders, the submission received from Spotless was incomplete because, among other things, it did not include a completed standard form (SF) 1449, Solicitation/Contract/Order for Commercial Items, as required by the solicitation.<sup>1</sup>

The record reflects that a representative of Spotless arrived at the place for bid opening shortly before bid opening was to occur, and hand-delivered to the contracting officer a completed SF 1449 and bid schedule, as well as Spotless's bid bond, certificate of insurance, references, and corporate information. Protester's Comments at 5. The protester's hand-delivered SF 1449 included the following hand-written notation:

Confidential & Privileged: Not subject to disclosure under the Freedom of Information Act, 5 U.S.C. Section 552, et seq. This document contains trade secrets & commercial & financial information obtained from Spotless Janitorial Services, Inc. is privileged & confidential.

AR, Tab 12, Spotless Hand-Delivered documents. The hand-delivered bid schedule included a nearly identical notation, differing only in that it specifically stated that the confidential and privileged notation applied to "all pricing."

The contracting officer read a statement at the bid opening, informing bidders that the bids received "shall now be publicly read aloud," and that "an examination of a copy of each bid received shall be permitted." AR, Bid Opening Script. The contracting officer added that "[t]he bid submitted by [S]potless Janitorial Services is rejected as non-responsive as the firm states that the pricing may not be disclosed to the public." Id.

Spotless protests that its bid should not have been rejected as nonresponsive, arguing that it did in fact submit a completed SF 1449 through the IIPS the day before bid opening was to occur. With regard to the SF 1449 and bid schedule that it hand-delivered to the agency on the day of bid opening, the protester asserts that the agency should not have accepted or considered those documents because, according to Spotless, bidders were only permitted by the IFB to submit bids through the IIPS. Protest at 6, n.1; Protester's Comments at 4.

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<sup>1</sup> The form includes the basic information about the acquisition (e.g., solicitation number, issuing activity, and schedule of supplies and services), and signature blocks for the parties—for the bidder's use upon submission, and for the contracting officer upon award, if the bid is successful.

Contrary to the protester's assertion, the IFB expressly provided for the submission of hand-delivered, written modifications to bids. Specifically, the solicitation stated, as mentioned previously, that "bids may be modified or withdrawn by written or telegraphic notice." IFB at 72. Accordingly, the agency's acceptance and consideration of the hand-written SF 1449 and bid schedule, hand-delivered by Spotless the day of, but prior to, bid opening, was proper. Because of this, whether the agency previously received Spotless's SF 1449 through the IIPS, as asserted by the protester, or whether Spotless's IIPS submission was incomplete because it did not include an SF 1449, as asserted by the agency, need not be decided. Under either scenario, as explained below, Spotless's bid was properly rejected by the agency as nonresponsive.

Federal Acquisition Regulation § 14.402-1 requires the public opening of unclassified bids. Our Office has interpreted the requirement for a public opening to mean that the bid must publicly disclose the essential nature and type of products offered and those elements of the bid that relate to price, quantity, and delivery terms, since the purpose of publicly opening bids is to protect both the public interest and the bidders from any form of fraud, favoritism, or partiality, and to leave no room for suspicion. VACAR Battery Mfg. Co., Inc., B-223244.2, June 30, 1986, 86-2 CPD ¶ 21. Therefore, we have held that restricting the disclosure of a bid renders it nonresponsive. Id. Given that Spotless's hand-delivered, written SF 1449 and bid schedule properly were accepted by the agency as explained above, and expressly provided that the documents were not to be disclosed publicly, the agency correctly rejected Spotless's bid as nonresponsive.

The protest is denied.

Anthony H. Gamboa  
General Counsel