



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Louisville Cooler Manufacturing

File: B-236355

Date: September 26, 1989

DIGEST

A bidder need not submit additional information in support of its certification that it would comply with the Drug-Free Workplace Act of 1988, Pub.L. No. 100-690, § 5152(a)(1), since, by its express terms, the solicitation's drug-free workplace clause is self-executing.

DECISION

Louisville Cooler Manufacturing protests any award to Honolulu Shipyard, Inc., or Walter T. Arakaki, General Contractor, Inc., under invitation for bids (IFB) No. N62471-88-B-2520, issued by the Department of the Navy for the addition of refrigerated storage and the replacement of equipment at the Naval Station, Pearl Harbor, Hawaii. The protester contends that the Navy should reject the two lower bids because of the bidders' failure to submit with their bids additional information in support of their certification of compliance with the Drug-Free Workplace Act of 1988, Pub. L. No. 100-690, § 5152(a)(1), 102 Stat. 4304 (1988).

We deny the protest.

In implementation of the Act, the IFB contained the Drug-Free Workplace certification and compliance clause prescribed by Federal Acquisition Regulation (FAR) §§ 52.223-5, -6 (FAC 84-43). The clause requires the bidder to certify and agree that it will make a good faith effort to take certain actions to maintain a drug-free workplace, and provides that the failure of a bidder to provide the required certification will "render the offeror unqualified and ineligible for award." Both the Act and the FAR provide that certifying compliance with the Act is a contractor responsibility requirement and that it is a condition of award. As we have recently held, since the certification involves a matter of responsibility, a contracting officer

may accept a bidder's certification up until the time of award. Universal Hydraulics, Inc., B-235006, June 21, 1989, 89-1 CPD ¶ 585.

Here, the protester does not dispute that the two lower bids included the drug-free workplace certification clause. Rather, it argues that those "bids" are, in the language of the clause, "unqualified and ineligible for award"--which the protester interprets as requiring rejection without further discussion--because those bidders failed to provide "information or support of certification, etc.," or "certification of certified statements."^{1/}

In support of its argument, the protester points to a note at the end of the representations and certifications section of the solicitation which requires bidders to provide full, accurate and complete information. The protester contends that in light of this note, offerors are required to supply, in addition to the statements included within the certifications and representations, information or support of the same. We disagree.

The drug-free workplace certification is the last of 16 clauses contained in the IFB's representations and certifications section, which ends at the middle of a page. At the very bottom of that page appears the following note on which the protester bases its argument:

"[NOTE: Bids must set forth full, accurate and complete information as required by this invitation for bids (including attachments). The penalty for making false statements is prescribed in 18 U.S.C. 1001.]

A completed REPRESENTATIONS AND CERTIFICATIONS is to be returned with the bid."

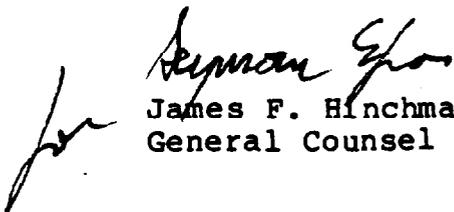
It is clear from the context of this note that it refers to the representations and certifications section of the IFB as a whole, because many of its clauses do require bidders to provide information by checking boxes or filling in blanks.

^{1/} Some idea of what the protester means can be gathered from its own bid, to which it attached a two-sentence statement typed on company letterhead which essentially stated that the protester "certified" that it would "abide by" the IFB's drug-free workplace certification "in its entirety," including notifying the contracting officer of any violations and terminating the employment of violating employees.

In contrast, the certification for a drug-free workplace states that "[b]y the submission of its offer, the offeror . . . who is making an offer that equals or exceeds \$25,000, certifies and agrees, that with respect to all employees of the offeror to be employed under the contract resulting from this solicitation," it will comply with the provisions of the Act. (Emphasis added.) This means that additional or supporting information is unnecessary, because by the clause's terms, when the clause is included in a bid, it is self-executing.

Moreover, even if the contracting agency needs additional information supporting the certification, because bidder responsibility is involved, bidders would be permitted to submit this information any time prior to award. Regardless of whether additional information were required, therefore, a bidder's failure to include any such information in its bid would not cause its bid to be rejected.

Accordingly, the protest is denied.


James F. Hinchman
General Counsel