



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Pennsylvania Printed Products Co., Inc.

File: B-239579

Date: August 29, 1990

William H. Brehm for the protester.
Joyce B. Harris, Office of the General Counsel, United States Government Printing Office, for the agency.
Linda S. Lebowitz, Esq., Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest alleging solicitation impropriety apparent on the face of the solicitation for paper products (that the format of the solicitation and the certification of minimum waste paper content was ambiguous and confusing as written) is untimely when not filed prior to bid opening.
2. Where the protester failed to insert "50%" in the offeror's percentage column on the certificate of minimum waste paper content as required by the solicitation for a firm intending to submit a certified offer to supply paper with at least 50 percent waste paper content, the agency properly interpreted the protester's offer as a noncertified offer to supply paper with no waste paper content.

DECISION

Pennsylvania Printed Products Co., Inc. protests the award of a contract to Visual Systems, Inc. under jacket No. 728-610, issued by the United States Government Printing Office for various quantities of workbooks and transparencies. The protester argues that as the apparent low offeror,^{1/} the agency should have awarded it the contract.

We dismiss the protest in part and deny it in part.

^{1/} Although the solicitation uniformly referred to "offers" and "offerors," we note that sealed bidding procedures were contemplated and used in this procurement.

The solicitation was issued to 40 firms on April 3, 1990. The solicitation provided that a firm could submit a certified offer which would reflect the firm's commitment to supply paper meeting the solicitation's minimum waste paper content requirement. The solicitation required an offeror submitting a certified offer to sign the following certification:

"[T]he paper supplied under any contract resulting from this solicitation [meets or exceeds] the minimum percentage of waste paper or recovered materials below.

<u>Minimum Percentage</u>	<u>Offeror's Percentage</u>
50%	

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"The offeror hereby certifies that the paper proposed to be supplied under the contract will contain the percentage(s) in the column 'offeror's percentage' above."^{2/}

The solicitation also permitted a firm to submit a noncertified offer to supply paper with any percentage of waste paper below the specified 50 percent minimum waste paper content (including zero percent). A firm submitting a noncertified offer was requested, not required, to certify the percentage of waste paper content in the paper it intended to supply.^{3/}

The solicitation provided that the agency would award a contract to the responsible offeror whose low certified offer was determined to be fair and reasonable. If the agency received no certified offers or the certified offers received were determined not to be fair and reasonable, the agency would award a contract to the responsible offeror submitting the low, fair and reasonable noncertified offer.

Ten firms submitted offers by the time of bid opening on April 17. The protester submitted the low price of

^{2/} The agency wrote the "50%" figure on the certification to indicate the required minimum waste paper content to be supplied by a firm submitting a certified offer.

^{3/} The solicitation also provided that firms could submit both a certified and a noncertified offer.

\$132,198, and Visual Systems submitted the second low price of \$138,465. The protester did not insert a percentage figure in the offeror's percentage column; Visual Systems inserted "50%" in the offeror's percentage column. The agency, while recognizing that the protester submitted the low price, regarded its offer as a noncertified offer to supply paper with no waste paper content because the firm did not certify in the offeror's percentage column that it would supply paper with at least 50 percent waste paper content. The agency regarded Visual Systems' offer as a certified offer because Visual Systems did certify by inserting "50%" in the offeror's percentage column that it would supply paper with a minimum 50 percent waste paper content.

Because Visual Systems was the low responsible offeror submitting a certified offer, the agency awarded it a contract on April 26. By letter dated April 26, the protester filed an agency-level protest challenging the award to Visual Systems and arguing that it certified it would supply paper with at least 50 percent waste paper content. The agency denied this agency-level protest by letter dated May 9. This protest followed.

The protester argues that the format of the solicitation and the solicitation's certification requiring the insertion of a percentage figure in the offeror's percentage column were ambiguous and confusing. To the extent the protester is arguing that the solicitation and the certification were defective as written, we will not consider this ground of protest because it is untimely. Our Bid Protest Regulations require that a protest 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) (1990). Here, the protester's objection to the format of the solicitation and the certification concerns an alleged solicitation impropriety apparent from the face of the solicitation. The protester did not protest this issue to either the agency or our Office until after the bid opening date and the award. Accordingly, this ground of protest is dismissed as untimely. KASDT Corp., B-235889, July 19, 1988, 89-2 CPD ¶ 63.

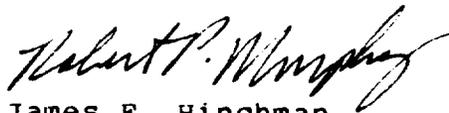
The protester also argues that it was not necessary for it to insert "50%" in the offeror's percentage column because by signing its certification and its offer, the firm evidenced its intent to comply with the 50 percent minimum waste paper content requirement. The protester states that if it did not intend to supply paper with a minimum 50 percent waste paper content, it would have crossed out the 50 percent figure inserted by the agency on the

certification and would have inserted another percentage figure in the offeror's percentage column. As the low priced offeror, the protester maintains it was entitled to the award.

Here, the certification clearly required, and not merely requested, those firms intending to supply paper with at least 50 percent waste paper content to insert "50%" in the offeror's percentage column on the certification. Indeed, the certification, by its terms, applied exclusively to the minimum percentage of waste paper "contain[ed] . . . in the column 'offeror's percentage.'" The protester did not insert any percentage figure in the offeror's percentage column on the certification. Because the protester left the offeror's percentage column blank, the agency, in our view, properly interpreted the protester's offer as a noncertified offer to supply paper with no waste paper content. The fact that the protester signed its offer did not evidence an intent to submit a certified offer to provide paper meeting the 50 percent waste paper content requirement. See 50 Comp. Gen. 844 (1971), where we held that a bidder who failed to insert in its bid its specific goals for minority manpower utilization was not bound to the minimum goals set forth in the solicitation simply because the bidder signed the portion of the bid containing the requirement.

Therefore, although the protester's price was less than Visual Systems' price, the protester was reasonably considered by the agency as having submitted a noncertified offer. As the agency's award methodology called for award of a contract to the offeror submitting the low priced certified offer, the agency properly did not make an award to the protester.

Accordingly, the protest is dismissed in part and denied in part.



for James F. Hinchman
General Counsel