



Comptroller General
of the United States

Washington, D.C. 20548

B Miller

145141

Decision

Matter of: Woodington Corporation

File: B-244579.2

Date: October 29, 1991

Josiah H. Woodington, III, for the protester.
Terence Murphy, Esq., Kaufman & Canoles, for Cottrell Engineering Corporation, an interested party.
Lester Edelman, Esq., Department of the Army, for the agency.
Behn Miller and Andrew T. Pogany, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Bidder's failure to enter certifier's name in the first paragraph of the Certificate of Procurement Integrity form does not render its bid nonresponsive where the certifier's typed name and signature were properly inserted at the bottom of the certificate.

2. Bidder's failure to enter the solicitation number on Certificate of Procurement Integrity form does not render its bid nonresponsive where the completed certificate was physically submitted with the bid and signed by the same individual as had signed the bid.

DECISION

Woodington Corporation protests any award under invitation for bids (IFB) No. DACW65-91-B-0025, issued by the Army Corps of Engineers for hydraulic dike construction in Portsmouth, Virginia.¹ Woodington, the third low bidder, argues that the bid submitted by Cottrell Engineering Corporation--the apparent low bidder²--is nonresponsive

¹ Woodington filed an earlier protest with this Office on June 20 which we dismissed as premature since, at that time, the agency had not yet evaluated bids.

² On June 20, at bid opening, four bids were received. Cottrell was the apparent low bidder with a bid of \$352,000; Norfolk Dredging Company was the second low bidder with a bid of \$545,500. The protester was third low bidder with a bid of \$585,500.

because Cottrell failed to properly execute the Certificate of Procurement Integrity. For the same reason, Woodington also challenges the responsiveness of the second low bid.

We deny the protest.

BACKGROUND

The IFB was issued on May 22, 1991. Because the contract award was expected to exceed \$100,000, by amendment No. 0001 issued June 10, the Army added the Certificate of Procurement Integrity to the IFB, as required by Federal Acquisition Regulation (FAR) § 3.104-10(a) (FAC 90-2). The Certificate of Procurement Integrity requirement, set forth at FAR § 52.203-8 (FAC 90-2), implements the Office of Federal Procurement Policy (OFPP) Act, 41 U.S.C.A. § 423 (West Supp. 1991), a statute which 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 OFPP Act.¹ Shifa Servs., Inc., B-242686, May 20, 1991, 70 Comp. Gen. ____, 91-1 CPD ¶ 483. 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. Id.

The certification requirements obligate a named individual--the officer or employee of the contractor responsible for the bid or offer--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. Mid-East Contractors, Inc., B-242435, Mar. 29, 1991, 70 Comp. Gen. ____, 91-1 CPD ¶ 342. Additionally, the signer of the certificate is required to collect similar certifications from all other individuals involved in the preparation of bids or offers; as a result of the substantial legal obligations imposed on a contractor by the certificate, we have held that the Certificate of Procurement Integrity constitutes a material term of the solicitation, and compliance with the certification requirements is therefore a matter of responsiveness. Id.

¹ The OFPP Act's provisions requiring this certification became effective, for the second time, on December 1, 1990.

In this case, the Army used a photocopy of the certification clause provided at FAR § 52.203-8 as the IFB's Certificate of Procurement Integrity. Accordingly, bidders were required to complete and submit the following form:

"CERTIFICATE OF PROCUREMENT INTEGRITY

"(1) I, [Name of certifier], am the officer or employee responsible for the preparation of this offer . . . hereby certify that . . . I have no information concerning a violation or possible violation of . . . the [OFPP] Act . . . occurring during the conduct of this procurement (solicitation number).

"(2) . . . I further certify that, to the best of my knowledge and belief, each officer employee, agent, representative, and consultant [Name of Offeror] . . . is familiar with, and will comply with, the requirements . . . of the Act

"(3) Violations or possible violations:
. . . ENTER "NONE" IF NONE EXIST _____

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"[Signature of the officer or employee responsible for the offer and date]
[Typed name of the officer or employee responsible for the offer]."

In its protest, Woodington argues that the Cottrell bid is nonresponsive because Cottrell failed to insert both the "[n]ame of certifier" and solicitation number in paragraph 1 of the certificate.⁴ We disagree.

DISCUSSION

Where as here, a bid's responsiveness is challenged, we review the bid to determine whether the bid represents an unequivocal commitment to perform without exception the specifications called for in the IFB so that the bidder will be bound to perform in accordance with all the material terms and specifications. David Morales, B-243791.3, Aug. 27, 1991, 91-2 CPD ¶ 202. Here, despite the failure to insert the certifier's name and solicitation number, we find that Cottrell unequivocally committed itself to the certification requirements.

⁴ Cottrell properly completed all other portions of the certificate.

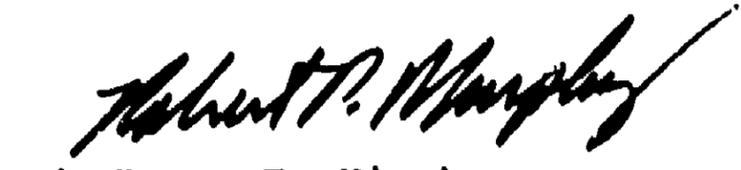
Although Cottrell neglected to fill in the "[n]ame of certifier" blank at paragraph 1, the firm did in fact identify itself as "Cottrell Engineering Corporation" in the "[n]ame of [o]fferor" blank found in paragraph 2 of the certificate. Additionally, the typed name of "B.G. Cottrell" and his signature appear in the appropriate places beneath paragraph 4 of the form. Since FAR § 52.203-8 only allows one individual--the "officer or employee responsible for this offer"--to certify the firm's compliance with the OFPP Act, and since Cottrell did not insert any other person's name as the certifier, there is no reasonable basis to conclude that the certifier in this instance is other than B.G. Cottrell.

Similarly, we do not find that Cottrell's failure to provide the solicitation number constitutes a defect rendering the bid nonresponsive. Although Woodington argues that without the solicitation number there is no evidence that the signed certificate applies to this IFB, Cottrell completed and physically submitted with its bid the actual certificate form furnished by the Army for this IFB. This certificate was signed by the same individual that signed the bid for Cottrell. We think this is sufficient to identify the certificate with this particular IFB.

In its protest, Woodington also argues that the procurement integrity certificate submitted by Norfolk Dredging Company--the second low bidder--is nonresponsive because that firm similarly failed to insert the solicitation number in paragraph 1.

Since we find that Cottrell's certificate was responsive to the IFB's procurement integrity certification requirement, we need not consider Woodington's protest against the Norfolk Dredging Company bid since, as the low bidder, award may properly be made to Cottrell.

The protest is denied.


James F. Hinchman
General Counsel