



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: W.G. Yates & Sons Construction Company
File: B-248719
Date: August 11, 1992

William R. Purdy, Esq., Ott, Purdy & Scott, for the protester.
Charles M. Powers for R.C. Construction Company, Inc./ Charles M. Powers/John H. Powers--A Joint Venture, an interested party.
Kim Kegowicz, Esq., and Darryl Dunham, Department of the Army, for the agency.
Scott H. Riback, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that bid is nonresponsive because it was submitted with certificate of procurement integrity signed by only one joint venturer is dismissed where post-bid opening evidence establishes that signing party in fact had authority to bind firm.
2. Protest that firm improperly dated certificate of procurement integrity 1 week prior to bid opening and is therefore not liable for prohibited conduct occurring after that date is without merit; submission of a properly executed certificate imposes a continuing obligation upon firm and certifying individual during conduct of entire procurement.

DECISION

W.G. Yates & Sons Construction Company protests the proposed award of a contract to R.C. Construction Company, Inc./Charles M. Powers/John H. Powers--A Joint Venture, under invitation for bids (IFB) No. DAHA22-92-B-0003, issued by the Department of the Army to acquire services in connection with the upgrading of aircraft pavements at Key Airfield in Meridian, Mississippi. Yates argues that RC's bid was nonresponsive for failure to include a properly executed certificate of procurement integrity.

We dismiss the protest.

The IFB called for the submission of fixed-price bids and provided for award to the lowest priced, responsive,

responsible bidder. The solicitation contained the certificate of procurement integrity appearing at Federal Acquisition Regulation (FAR) § 52.203-8, as required by the Office of Federal Procurement Policy (OFPP) Act, 41 U.S.C. § 423 (1988). The Army received 11 bids by the April 21, 1992, closing date. RC's bid was low and Yates' was second low.

The RC bid was submitted by a joint venture comprised of RC Construction Company, Inc., Charles M. Powers and John H. Powers. Charles and John Powers are co-owners of RC Construction and apparently submitted the RC bid in the name of the joint venture so that the firm could obtain bonding. The bid was executed with three signatures; Charles Powers signed once as president of RC Construction and again as one of the joint venturers, and John Powers signed as the third joint venturer. The required bid bond similarly was executed with the signatures of all three joint venturers. RC's certificate of procurement integrity, on the other hand, was signed only by Charles Powers, although it recited all three joint venturers in the space provided for the name of the bidder. RC's bid and the firm's certificate of procurement integrity were both dated April 14, 1 week prior to the closing date for bids. Shortly after bid opening, Yates protested to the agency that RC's bid was nonresponsive because the certificate of procurement integrity included in the bid was inadequate. The Army denied Yates's protest and the firm filed this protest with our Office. The agency has withheld award pending our decision.

Yates maintains that RC's certificate of procurement integrity was not properly executed because Charles Powers allegedly was not authorized to sign the certificate on behalf of the joint venture; Yates asserts that federal law prohibits one joint venturer from binding the joint venture in the absence of evidence showing that the signing party had authority to bind the entity. Yates argues that any evidence of Charles Powers' authority to bind the joint venture had to be submitted with the RC bid in order for its bid to be responsive.

We need not consider whether the certificate must be signed by an individual authorized to bind the bidding entity, since it is clear that, in this case, such authority existed. We have long recognized that bidders may submit evidence establishing the authority of an individual to sign a bid after bid opening, 49 Comp. Gen. 527 (1970); the lack of such evidence at the time of bid opening does not render the bid nonresponsive. Alpha O, Inc., B-234403.2, Oct. 31, 1989, 89-2 CPD ¶401; Marine Power and Equip. Co., Inc., B-208393, Dec. 7, 1982, 82-2 CPD ¶ 514. We find no basis for applying a different rule in this case.

Here, the record contains an affidavit executed by John Powers which describes the nature of the joint venture as well as the firm's reason for bidding as a joint venture, and also states that Charles Powers had authority to bind the joint venture.¹ As this is the only evidence in the record bearing on the issue, we have no reason to question Charles Powers' authority.²

Yates also argues that the RC bid is nonresponsive because the certificate of procurement integrity was dated approximately 1 week prior to bid opening. According to Yates, bidders are required to date their certificates (as well as their bids) on either the date of bid opening or on the date when the bidder relinquishes control of its bid package, for example, by placing it in the mail. Yates maintains that RC's failure to do so here improperly resulted in a 1 week period after the certification was executed during which the firm could have engaged in prohibited conduct which would not have been reflected in its certificate.

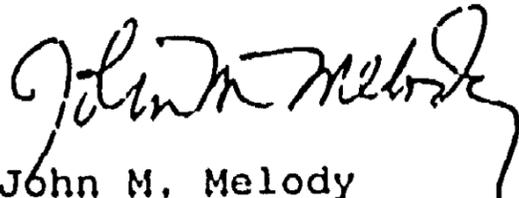
This argument is without merit. The individual executing a certificate of procurement integrity certifies that he or she has no information concerning a violation or possible violation of the OFPP Act "occurring during the conduct of any federal agency procurement of property or services." FAR §§ 3.104-3(a) and 52.203-8; see also, 41 U.S.C. § 423(e)(1)(A)(i). Under FAR § 3.104-4(c), the phrase "during the conduct of any federal agency procurement of property or services" is defined as including that period of time beginning with the earliest date on which an identifiable, specific action is taken for the particular procurement and concluding with the award or modification of a contract or the cancellation of the procurement. Consequently, RC's certifying official has an ongoing obligation to report violations or possible violations of

¹John Powers is the only other individual involved in the joint venture, since he and Charles Powers are the sole owners of RC.

²Yates also argues that the RC bid was ambiguous as to the firm's intention to be bound by all the terms of the IFB, since the different methods of execution used in signing its bid and the certificate of procurement integrity create an ambiguity regarding who may bind the firm. In view of our conclusion that the evidence establishes that Charles Powers was in fact authorized to bind the joint venture, this allegation is academic since it is not disputed that he signed both the bid and the certificate.

the OFPP Act, and the Act's prohibitions are applicable during the entire acquisition, regardless of the dating of RC's certificate 1 week before bid opening.

The protest is dismissed.


John M. Melody
Assistant General Counsel