



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Victory Corrugated Container Corporation  
File: B-230750  
Date: April 15, 1988

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### DIGEST

Protest that low bidder used a commissioned agent and failed to submit with its bid a Standard Form (SF) 119 describing that arrangement is dismissed because there has been no allegation that the commissioned agent is not a bona fide employee or agent of the bidder and the regulations do not require the submission of SF 119 with a bid.

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### DECISION

Victory Corrugated Container Corporation protests the award of a requirements contract to Pride Container Corporation under invitation for bids (IFB) No. 2FYS-BB-88-0008-S, issued by the General Services Administration (GSA) to procure various types of boxes. Victory asserts that Pride's bid indicates that a commissioned agent is involved and that Pride failed to submit Standard Form (SF) 119 with its bid. SF 119 is a statement of contingent or other fees payable for soliciting or obtaining a government contract. Victory further alleges that the agent involved here also is employed by other bidders.

We dismiss the protest under section 21.3(m) of our Bid Protest Regulations, 4 C.F.R. Part 21 (1988), because it fails to state a basis for protest and otherwise is not for consideration.

Generally, a bidder is required to certify in its bid whether it has employed any person or firm to obtain the contract and whether it has agreed to pay a fee contingent on the bidder receiving a contract award. Federal Acquisition Regulation (FAR) § 52.203-4 (FAC 84-17). (The certification is not required with respect to the bidder's full-time employees working solely for the bidder). If the bidder certifies in the affirmative, it is required to submit SF 119 so that the agency can determine if the contingent fee arrangement is with either a "bona fide agency" or a "bona fide employee," in which case the payment

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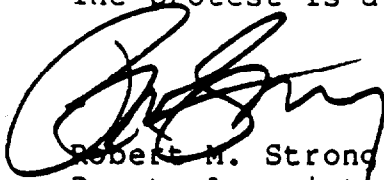
of a contingent fee would be permitted. FAR § 3.408-1(a)(2) (FAC 84-5). In the alternative, the contractor may submit a signed statement indicating that a previously submitted SF 119 applies to the current offer. FAR § 52.203-4(b)(2).

In this case, GSA has forwarded to our Office a copy of Pride's bid, which indicates that Pride agreed to pay a contingent fee to obtain a contract. The fact that Pride's bid disclosed such an arrangement, however, is not sufficient to constitute a basis for protest in the absence of an allegation that the arrangement is with other than a bona fide agency or a bona fide employee. Victory has made no such allegation here.

Further, Pride's failure to submit an SF 119 with its bid does not provide a basis to object to an award to that firm because the regulations do not require that the form be submitted with the bid. In this regard, FAR § 3.405(b)(5) requires that an agency request the form (or a statement that a prior form is still valid) only when the bid indicates that a contingent fee arrangement exists. GSA has provided us with a copy of a post-bid opening letter from Pride forwarding a previously submitted SF 119 that the firm said also applies to this procurement.

Finally, to the extent that Victory is suggesting that the alleged use of a common agent might constitute collusive bidding, such matter is, in the first instance, to be considered by the contracting officer in the context of a responsibility determination. Connelly Containers, Inc., B-227539, July 14, 1987, 87-2 CPD ¶ 44. Moreover, since collusive bidding is a criminal offense, it ultimately would be a matter for the Department of Justice. Id.

The protest is dismissed.

  
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General Counsel