



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Hampton Roads Leasing, Inc.--Request for
Reconsideration

File: B-236564.3

Date: April 4, 1990

Benjamin A. Hubbard, Esq., Outland, Gray, O'Keefe & Hubbard, for the protester.
Jennifer Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration is denied where protester fails to show any error of law or fact in prior decision holding that agency may accept a bid that did not include a signed Certificate of Procurement Integrity at the time of bid opening since, even assuming the bid was nonresponsive for failure to comply with the certification requirement, acceptance of the bid would serve the actual needs of the government and would not prejudice other bidders.

DECISION

Hampton Roads Leasing, Inc., requests reconsideration of our decision, Hampton Roads Leasing, Inc., B-236564, B-236564.2, Dec. 11, 1989, 69 Comp. Gen. ____, 89-2 CPD ¶ 537, in which we denied its protest of the Navy's proposed award of a contract for the leasing of a mobile hydraulic propeller pulling crane to either Anderson Funding Group or Capital Equipment Co., Inc., under invitation for bids (IFB) No. N62470-89-B-2238. Hampton Roads contends that we erred in failing to find both Anderson's low bid and Capital's second low bid nonresponsive for failure to include a signed and completed Procurement Integrity Certificate at the time of bid opening.

We deny the request for reconsideration.

As we noted in our previous decision, although the solicitation, as amended, incorporated the Certificate of Procurement Integrity provision, Federal Acquisition

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Regulation (FAR) § 52.203-8, which implements 41 U.S.C. § 423(d)(1) (West Supp. 1989)^{1/}, section 423 and the implementing regulations, including FAR § 52.203-8, were suspended for a 1-year period beginning on December 1, 1989, pursuant to section 507 of the Ethics Reform Act of 1989, Pub. L. No. 101-194, 103 Stat. 1716, 1759 (1989). As a result, agencies were instructed that for solicitations for which bids had been received prior to December 1, 1989, but for which award had not yet been made, the contracting officer was to disregard the lack of certification in determining eligibility for award and to delete the provision at FAR § 52.203-8 by administrative change. See 54 Fed. Reg. 50,718. We found that since the statutory requirement for completion and signing of the Procurement Integrity Certificate as a condition of award had been suspended and no contract had yet been awarded, the Navy could proceed with award to Anderson despite the fact that Anderson had not submitted a signed Certificate prior to bid opening.

Hampton Roads argues that the certification requirement involves a matter of responsiveness which must be determined at the time of bid opening without taking subsequent events into consideration. The protester further contends that modification of the IFB after bid opening to delete the certification requirement does not change the fact that it bid on a different basis than Anderson and was therefore prejudiced.

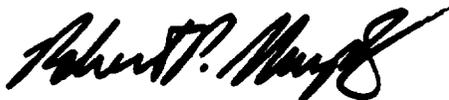
While the procurement integrity legislation was in effect, the contracting agencies took different positions on the issue of whether the certification requirement involved a matter of responsiveness or responsibility. Compare Westmont Indus., B-237289, Jan. 5, 1990, 90-1 CPD ¶ 26 with Fry Communications, Inc., B-237666, Feb. 23, 1990, 90-1 CPD ¶ ____. In our view, since completion of the Procurement Integrity Certificate binds the contractor to detect and report violations of the procurement integrity provisions,

^{1/} 41 U.S.C. § 423(d)(1) essentially provides that an agency shall not award a contract unless a bidder or offeror certifies in writing that neither its officers nor its employees have any information concerning violations or possible violations of subsections (a), (b), (c), or (e) of section 423 pertaining to the procurement, or discloses to the contracting officer all such information. The activities prohibited by the section involve soliciting or discussing post-government employment, offering or accepting a gratuity, and soliciting or disclosing proprietary or source selection information.

an obligation not otherwise imposed by statute or regulation, the certification requirement reasonably may be interpreted as imposing a material legal obligation and thus may be considered a matter of responsiveness. See Fry Communications, Inc., B-237666, supra.

Even assuming, however, that Anderson's low bid in this case was nonresponsive because it did not include a completed Certificate of Procurement Integrity, we think that acceptance of Anderson's bid nonetheless was reasonable. Although a nonresponsive bid usually must be rejected, a nonresponsive bid may be accepted where the awarded contract will serve the government's actual needs and no bidder will be prejudiced by the acceptance of the bid. Motorola Communicatons & Elecs., Inc., B-200647, Oct. 19, 1981, 81-2 CPD ¶ 313. Here, the protester has not argued that the awarded contract will not serve the government's actual needs; it does assert that it will be prejudiced by acceptance of Anderson's nonresponsive bid since it assumed legal obligations by completing the certificate that Anderson has not assumed and is now in a legally different position vis-a-vis the government than is Anderson. We disagree. As previously noted, agencies have been instructed to delete the provision at FAR § 52.203-8 from solicitations for which bids were received but awards were not made prior to December 1, 1989. Thus, if Hampton Roads were determined to be in line for award, its certification would be deleted from the resultant contract and it would not be obligated to comply with the requirements of the certificate. See Engineered Air Sys., Inc., B-237211, Dec. 26, 1989, 89-2 CPD ¶ 597.

Accordingly, we see no basis to disturb our finding that the bid of Anderson Funding Group may be accepted. The request for reconsideration is denied.



 James F. Hinchman
General Counsel