



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Service Technicians, Inc.

File: B-243606

Date: August 7, 1991

Ivor F. Thomas, Esq., for the protester.
John Koulakis for Koulakis Painting Co., Inc., an interested party.
Paul M. Fisher, Esq., and Vicki O'Keefe, Esq., Department of the Navy, for the agency.
Paula A. Williams, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Completed Certificate of Procurement Integrity is properly required under solicitation contemplating award of an indefinite quantity contract with a minimum quantity of \$50,000, where the estimated value of the orders to be placed exceeded \$100,000, as reflected by solicitation's evaluation provision which was based on specified maximum quantities which the solicitation estimated would fall within a range of \$1,000,000 to \$5,000,000.

2. Bid was properly rejected as nonresponsive for failure to submit required Certificate of Procurement Integrity because completion of the certificate imposes material legal obligations on the bidder to which it is not otherwise bound.

DECISION

Service Technicians, Inc. (Serv-Tech) protests the rejection of its bid as nonresponsive for failure to submit an executed Certificate of Procurement Integrity with its bid as required by invitation for bids (IFB) No. N68711-90-B-1206, issued by the Department of the Navy for painting services.

We deny the protest.

The IFB, which was issued on November 1, 1990, contemplated the award of a 1-year indefinite quantity contract to obtain exterior/interior painting of various buildings and the interior painting of various houses located within the Marine

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Corps Base, Camp Pendleton, California and the Naval Weapons Station, Fallbrook, California. On November 21, the Navy issued amendment No. 0001 to the IFB which, among other things, incorporated the requirement for a Certificate of Procurement Integrity pursuant to Federal Acquisition Regulation (FAR) §§ 52.203-8 and 52.203-9. The full text of these FAR provisions including the applicable certificates as well as instructions to bidders on how to complete the certificate were included in the amendment. The amendment explicitly advised bidders that "[T]he certificate contained in 52.203-8 must be submitted with the offeror's bid." (Emphasis in original.)

Bid opening was held on February 6, 1991, and of the nine bids received, Serv-Tech's was the second low bid at \$1,542,070. By letters dated February 21, the bids submitted by the low bidder and Serv-Tech, respectively, were rejected as non-responsive. Following the denial of its agency-level protest of the rejection of its bid for failure to submit the required certificate, Serv-Tech filed this protest with our Office.

Under FAR § 52.203-8(c)(1), the interpretation of which is at issue here, a certificate is not required for indefinite delivery contracts^{1/} "unless the total estimated value of all orders eventually to be placed under the contract is expected to exceed \$100,000."

Serv-Tech contends that it was not required to submit a certificate with its bid because the expected value of all orders to be placed under the proposed contract does not exceed the \$100,000 threshold. The thrust of Serv-Tech's argument is that since the IFB did not include any specific total estimated value of all orders which would be placed under the indefinite quantity contract, the "value" is limited to \$50,000, the amount set forth in amendment No. 0001 as the minimum quantity for purposes of payment and performance bond requirements. The protester cites Sletager, Inc., B-237676, Mar. 15, 1990, 90-1 CPD ¶ 298, as support for this interpretation.^{2/} In Sletager, Inc., our Office stated that for

^{1/} Indefinite quantity contracts are one of three types of indefinite delivery contracts. See FAR § 16.501(a).

^{2/} The protester also cites two Armed Services Board of Contract Appeals decisions Deterline Corp., ASBCA No. 33090, 88-3 BCA ¶ 21,132 and Crown Laundry & Dry Cleaners, Inc., ASBCA No. 39982, 90-3 BCA ¶ 22,993 to support its position. These cases are not relevant because they simply set forth the long-standing principle that the government is not obligated to order quantities in excess of the minimum stated in a

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purposes of determining the penal sum of payment and performance bonds for an indefinite quantity contract, the price payable for the specified minimum guarantee shall be considered the contract price. Serv-Tech argues that by analogy, for purposes of the procurement integrity certification requirement, the estimated value of all orders under the proposed contract is the dollar amount for the minimum quantity which, in this case, is \$50,000.

In our view, the Sletager case is inapposite because that decision was based on the guidance provided by FAR § 28.102-2(c)(2), which provides an explicit formula for determining the penal sum for bonds for indefinite-quantity construction contracts, but has no applicability to the Procurement Integrity Certificate requirement. The most direct guidance regarding submission of Procurement Integrity Certificates is found at FAR § 52.203-8(c)(2), which provides that a certificate is required for contracts which include options where the aggregate value including all options exceeds \$100,000. This regulation indicates that the certificate is required where there is a reasonable likelihood that the value of the award will exceed \$100,000, irrespective of the minimum amount of the government's actual or minimum obligation under the contract.

Here, the solicitation provided for a contract minimum of \$50,000 and an estimated range of between \$1,000,000 and \$5,000,000 as a maximum. The solicitation also listed the maximum quantities next to each of the 47 line items to be provided, and stated that bids would be evaluated on the basis of unit prices multiplied by the specified maximum quantities. Thus, all bidders were on notice that the agency contemplated an award which was expected to have a value between \$1,000,000, and \$5,000,000, and, in fact, all bidders including Serv-Tech submitted bids which were significantly in excess of the \$100,000 threshold. Under these circumstances, the agency reasonably concluded that the "total estimated value of all orders" under this solicitation exceeded the \$100,000 threshold, and the IFB clearly placed all bidders on notice that the certificate was required.

The Certificate of Procurement Integrity imposes additional legal requirements upon the bidder materially different from those to which the bidder is otherwise bound, either by its offer or by law. LBM, Inc., B-243505, Apr. 12, 1991, 91-1 CPD ¶ 372. In particular, the certification implements several provisions of the Office of Federal Procurement Policy (OFPP)

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solicitation. The cases do not provide any guidance concerning the total estimated value of the awards in question.

Act, 41 U.S.C. § 423 (West Supp. 1990); the OFPP Act prohibits activities involving soliciting or discussing post-government employment, offering or accepting a gratuity, and soliciting or disclosing proprietary or source selection information.

The procurement integrity 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. In addition, the signer of the certificate is required to collect similar certifications from all other individuals involved in the preparation of bids or offers; in this regard, the certifying individual attests that every individual involved in preparation of the bid or offer is familiar with the requirements of the OFPP Act. The certification provisions also prescribe specific contract remedies--including withholding profits from payments and terminating errant contractors for default--not otherwise available. See Mid-East Contractors, Inc., B-242435, Mar. 29, 1991, 70 Comp. Gen. ____, 91-1 CPD ¶ 342.

As a result of the substantial legal obligations imposed by the certification, omission from a bid of a signed Certificate of Procurement Integrity leaves unresolved a bidder's agreement to comply with a material requirement of the IFB. For these reasons, failure to complete and return the certificate itself by the bid opening date is a material deficiency in a bid requiring that the bid to be rejected as nonresponsive. See also FAR § 14.404-2(m).

Here, since the expected value of the contract will exceed \$100,000, Serv-Tech was required to furnish with its bid an executed certificate. Not having done so, Serv-Tech submitted a bid which does not represent on its face an unequivocal commitment to comply with the material obligations imposed by the certification, therefore, the Navy properly rejected Serv-Tech's bid as nonresponsive.

The protest is denied.


James F. Hinchman
General Counsel