



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Hein-Werner Corporation

File: B-247459

Date: June 2, 1992

James A. Wilke, Esq., for the protester,
Kurt D. Summers, Esq., General Services Administration, for
the agency,
Behn Miller, Esq., and Christine S. Melody, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

1. Protest challenging requirement for submission of a signed Certificate of Procurement Integrity is dismissed as untimely where solicitation clearly advised prospective bidders that the failure to submit the signed certificate with the bid would render the bid nonresponsive.
2. Bidder's alleged lack of knowledge regarding identity of contracting officer does not bar bidder from submitting properly completed and signed Certificate of Procurement Integrity with its bid since this certification only requires the bidder to disclose possible or actual Office of Federal Procurement Policy Act violations to the best of its knowledge and belief.
3. Office of Federal Procurement Policy Act and its implementing regulations contemplate submission of a new Certificate of Procurement Integrity for each procurement; accordingly, a Certificate of Procurement Integrity submitted by protester under prior procurement does not correct bidder's failure to provide a signed certificate with its bid under current solicitation.
4. Bid was properly rejected as nonresponsive for failure to submit a signed Certificate of Procurement Integrity because completion of the certificate imposes material legal obligations on the bidder to which it is not otherwise bound.

DECISION

Hein-Werner Corporation protests the rejection of its bid as nonresponsive for failure to include a signed Certificate of Procurement Integrity as required by invitation for bids

(IFB) No. 6FEP-CO-FM-920052-S-1-14-92, issued by the General Services Administration (GSA) for hydraulic and manual jacks.

We dismiss the protest in part and deny it in part.

The solicitation was issued on December 12, 1991, and contemplated the award of a 2-year, fixed-price, indefinite quantity contract. The IFB's pricing schedule contained 23 contract line items; under the terms of the solicitation, bidders could submit bids for one or more of these items.

Because the estimated value of all contract awards was expected to exceed \$100,000, the solicitation contained the Certificate of Procurement Integrity clause, Federal Acquisition Regulation (FAR) § 52.203-8, as required by FAR § 3.104-10(a).¹ This clause implements 41 U.S.C. § 423(e)(1) (Supp. II 1990), a statute that bars agencies from awarding contracts unless a bidder or offeror certifies in writing that neither it nor its employees have any information concerning violations or possible violations of the procurement integrity provisions of the Office of Federal Procurement Policy (OFPP) Act set forth elsewhere in 41 U.S.C. § 423 (1988 and Supp. II 1990). The activities prohibited by the OFPP Act, applicable to contractor employees and representatives and to government procurement officials, involve soliciting or discussing post-government employment, offering or accepting a gratuity, and soliciting or disclosing proprietary or source selection data.

At the January 14, 1992, bid opening, 12 bids were received. On January 16, after discovering that Hein-Werner had failed to complete and sign the Certificate of Procurement Integrity, the contract specialist rejected Hein-Werner's bid as nonresponsive.² On January 31, Hein-Werner filed this protest with our Office. In its protest, Hein-Werner first contends that the requirement that a signed Certificate of Procurement Integrity be submitted with its bid is "unreasonable" since the OFPP Act only provides that a federal agency "may not award a contract" without the certification. See 41 U.S.C. § 423(e)(1). Hein-Werner also contends that the requirement was unreasonable since Hein-Werner did not know the identity of the contracting officer for this

¹Where, as here, the estimated value of the orders to be placed under an indefinite quantity contract is expected to exceed \$100,000, the solicitation properly requires submission of a Certificate of Procurement Integrity. See Service Technicians, Inc., 70 Comp. Gen. 676 (1991), 91-2 CPD ¶ 136.

²Hein-Werner was the low bidder for three items and second-low bidder for six items.

procurement and therefore could not complete the certificate. In the alternative, Hein-Werner argues that because it submitted a signed Certificate of Procurement Integrity under a prior procurement for the same items, its current bid is responsive.

To the extent Hein-Werner is challenging the requirement that a signed certificate be submitted with its bid, the protest is untimely. Under our Bid Protest Regulations, a protest based on an alleged solicitation impropriety--such as the "unreasonable" certification submission requirement here--which is apparent from the face of the solicitation must be filed prior to bid opening. 4 C.F.R. § 21.2(a)(1) (1992); Summit Forests, Inc., B-242991, Apr. 25, 1991, 91-1 CPD ¶ 411. In this case, the solicitation set forth the full text of FAR § 52.203-8, "Certificate of Procurement Integrity," which expressly provides that the "[f]ailure of a bidder to submit the signed certificate with its bid shall render the bid nonresponsive." Additionally, the cover page of the IFB advised all bidders to "PAY PARTICULAR ATTENTION" to the Certificate of Procurement Integrity provisions set forth in the text of the solicitation. Since the requirement that the Certificate of Procurement Integrity be submitted with each contractor's bid was clearly set forth in the IFB and because Hein-Werner failed to challenge this requirement prior to the January 14 bid opening, this ground of protest is untimely.³

We find Hein-Werner's contention that it was unable to provide a signed certificate with its bid because the firm did not know the identity of the contracting officer for this procurement to be without merit. Under the terms of the OFPP Act and its implementing regulations, specific knowledge of a possible violator's actual identity is not a prerequisite to proper certification; the language of FAR § 52.203-8 merely requires the contractor to certify that "to the best of my knowledge and belief, with the exception of any information described in this certificate, I have no information concerning a violation or possible violation . . . of the [OFPP] Act."

The purpose of this certification requirement is disclosure of any and all knowledge in a firm's possession regarding possible OFPP Act violations by any of the parties; accordingly, we do not see how a bidder's lack of knowledge regarding the exact identity of the agency contracting

³In any event, we have expressly upheld the requirement that the Certificate of Procurement Integrity be submitted with a firm's bid. See American Dredging Co., B-244790, Oct. 29, 1991, 91-2 CPD ¶ 396.

officer bars it from submitting a properly completed and signed certificate with its bid.

Nor do we find that the certificate submitted by Hein-Werner under a previous procurement for these same items renders its current bid responsive.⁴ Both the OFPP Act and its implementing regulations define a federal agency procurement as a distinct time period "beginning" with a specific procurement action request and "concluding" with a contract award or contract modification. See 41 U.S.C. § 423(p); FAR § 3.104-4(c)(1). Thus, each contract award or modification constitutes a separate procurement action. With regard to the requirement for a Certificate of Procurement Integrity, 41 U.S.C. § 423(e)(1)(A)(i) specifically provides that "[a] Federal agency may not award a contract . . . unless [the contractor] responsible for the offer or bid for such contract, or the modification or extension of such contract . . . certifies in writing" as to its compliance with the OFPP Act's procurement integrity provisions for "such procurement." FAR § 3.104-4(c)(2) similarly provides that "[e]ach contract award and each contract modification constitutes a separate procurement action; i.e., a separate period to which the prohibitions and the requirements of the Act apply."

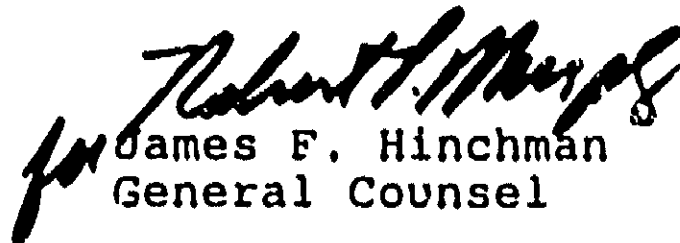
Finally, the certification provisions set forth in the actual certificate itself specifically identify the contractor's disclosure and certification as "pertaining to this procurement" and relating to OFPP Act violations "occurring during the conduct of this procurement." See FAR § 52.203-8.

Since the OFPP Act and its implementing regulations clearly contemplate the submission of a new signed certificate for each contract award, the fact that Hein-Werner submitted a Certificate of Procurement Integrity under a prior solicitation is irrelevant in determining its current compliance with the OFPP Act requirements for this procurement.

⁴GSA issued a solicitation for these items in December 1989 under which Hein-Werner received contract award. As issued, the 1989 solicitation required bidders to complete and sign a Certificate of Procurement Integrity. Although this certification provision was later deleted from the solicitation--due to the fact that Congress suspended the OFPP Act provisions requiring the certification from December 1, 1989, through December 1, 1990--Hein-Werner nonetheless submitted a properly completed and signed certificate with its bid for that procurement.

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; accordingly, a bidder's failure to submit a signed certificate with its bid is a material deficiency requiring that the bid be rejected as nonresponsive. See FAR § 14.404-2(m); Mid-East Contractors, Inc., 70 Comp. Gen. 383 (1991), 91-1 CPD ¶ 342. Here, because Hein-Werner failed to submit a signed Certificate of Procurement Integrity with its bid for this procurement, we find the agency's rejection of its bid as nonresponsive to be proper. See McGuire Refrigeration, Inc., B-242754, May 31, 1991, 91-1 CPD ¶ 519.

The protest is dismissed in part and denied in part.


for James F. Hinchman
General Counsel