



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Hay-Holland Company  
**File:** B-233002  
**Date:** February 1, 1989

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### DIGEST

Protest against rejection of proposal allegedly submitted by offeror's agent is denied where the agent did not identify the principal or disclose its agency relationship in the proposal. To allow identification of the principal after the closing date for the receipt of proposals would be tantamount to the submission of a new offer or the transfer of an offer, which is not permitted except in limited circumstances not present in this case.

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### DECISION

Hay-Holland Company protests the rejection of the low priced proposal which it asserts that it submitted as an agent for Wholesale Radiator Warehouse, under request for proposals (RFP) No. DAAE07-88-R-J152, issued by the United States Army Tank-Automotive Command (TACOM), for 21 radiator core assemblies. TACOM rejected the proposal because it determined that Hay-Holland improperly attempted to contract in its own name, instead of the principal's, by listing itself as the offeror and signing the proposal. Hay-Holland contends that listing itself as the offeror was a clerical error which TACOM should permit it to correct as a minor informality.

We deny the protest.

TACOM rejected the proposal on the basis that Federal Acquisition Regulation (FAR) § 22.607 (FAC 84-29) provides that a manufacturer or regular dealer may bid, negotiate, and contract through an authorized agent only if the agency is disclosed and the agent acts and contracts in the name of the principal. In its Walsh-Healey Act certification, Hay-Holland indicated that it was not a regular dealer or manufacturer and, in the margin, wrote that it was the agent of or for a regular dealer. However, Hay-Holland did not identify any principal, listed itself as the offeror,

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indicated that the offeror was an individual, and signed the proposal. Subsequent to the closing date, Hay-Holland furnished TACOM with a copy of an agency agreement with Warehouse which was allegedly in effect prior to the closing date for the receipt of initial proposals.<sup>1/</sup> TACOM rejected the proposal because it determined that Hay-Holland, by signing the proposal in its own name without designating the principal, had attempted to contract in its own name rather than the principal's. In denying Hay-Holland's agency-level protest, TACOM determined that this defect could not be waived as a minor informality because Warehouse was not sufficiently identified as the principal in the offer and, therefore, there was no binding offer from Warehouse. Further, TACOM determined that it would be prejudicial to the other offerors to allow Hay-Holland to identify Warehouse as the principal after the closing date.

TACOM argues that while our cases have permitted an offeror to establish the agent's authority to sign or submit an offer on its behalf after the receipt of offers, these cases do not permit the offeror to initially identify itself after the closing date. See e.g., Marine Power and Equipment Co., 62 Comp. Gen. 75 (1981), 81-1 CPD ¶ 31. Since Warehouse was not identified, TACOM argues that allowing Hay-Holland to identify Warehouse as the principal would constitute substituting a different offeror after the closing date, which is tantamount to the improper transfer of a proposal which is not permitted except by operation of law or the sale of certain interests in a business. See Numax Electronics, Inc., 54 Comp. Gen. 580 (1975), 75-1 CPD ¶ 21; Coonrod & Assocs., B-228914, 67 Comp. Gen. \_\_\_\_\_, 87-2 CPD ¶ 549; and Martin Co., B-178540, May 8, 1974, 74-1 CPD ¶ 234.

We find that TACOM properly rejected the proposal. Hay-Holland did not definitively identify Warehouse until after the closing date for the receipt of initial proposals. Since the principal was not disclosed, there was no basis

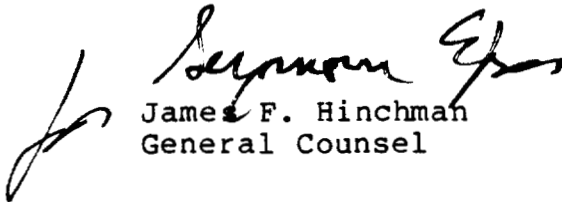
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<sup>1/</sup> The purported agency agreement is undated and reads, in its entirety, as follows:

"This document is intended to create an agency agreement between Wholesale Radiator Warehouse of Norcross, Ga., and the Hay-Holland Company of Perry, Ga., whereby authorization is extended to the Hay-Holland Co. to contract with different Gov't agencies in the name of the principal, in this case being Wholesale Radiator Warehouse, for the sale of their products."

to conclude that Warehouse was the actual intended principal. Therefore, to permit Hay-Holland to identify Warehouse as the principal after the closing date would, in effect, constitute the transfer of the proposal to an entity other than the named offeror, which was Hay-Holland. An offeror may not transfer or assign a proposal unless the transfer is effected by operation of law, or merger, or corporate reorganization, or sale of an entire business, or sale of an entire portion of a business, or some other means which is not barred by the anti-assignment statutes. See Numax Electronics, Inc., 54 Comp. Gen., supra.

The protest is denied.



James F. Hinchman  
General Counsel