

Gordon
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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Holly's Incorporated

File: B-246444

Date: March 4, 1992

Kevin J. Cosgrove, Esq., Hunton & Williams, for the protester.
James N. McCutcheon, Esq., and Paul M. Fisher, Esq., Department of the Navy, for the agency.
Daniel I. Gordon, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where bidder's representative failed to sign required Certificate of Procurement Integrity on designated signature line, bidder is not unequivocally committed to certificate's terms and bid must be rejected as nonresponsive.

DECISION

Holly's Incorporated protests the proposed award of a contract for refuse collection and disposal to John L. Holland Enterprises under invitation for bids (IFB) No. N62470-91-B-3991, issued by the Little Creek Naval Amphibious Base, Department of the Navy. Holly's contends that Holland's bid should be rejected as nonresponsive because Holland's representative failed to properly execute the Certificate of Procurement Integrity.

We sustain the protest.

Because the contract award was expected to exceed \$100,000, the agency included the Certificate of Procurement Integrity in the IFB as required by the Federal Acquisition Regulation (FAR) § 3.104-10(a). The Certificate of Procurement Integrity requirement, set forth at FAR § 52.203-8, implements the Office of Federal Procurement Policy (OFPP) Act, 41 U.S.C.A. § 423 (West Supp. 1991), a statute which 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 OFPP Act. Shifa Servs., Inc., 70 Comp. Gen. 502 (1991), 91-1 CPD § 483. The activities prohibited by the OFPP Act involve soliciting or discussing

post-government employment, offering or accepting a gratuity, and soliciting or disclosing proprietary or source selection information. Id.

The 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 offeror, and its representative, a requirement to make full disclosure of any possible violations of the OFPP Act, and to certify to the veracity of the disclosure. Mid-East Contractors, Inc., 70 Comp. Gen. 383 (1991), 91-1 CPD ¶ 342. Additionally, the signer of the certificate is required to collect similar certifications from all other individuals involved in the preparation of bids or offers.

Eight bids were received in response to the IFB at issue in this protest. For reasons not relevant to the protest, both the lowest bid and the third lowest bid were rejected as nonresponsive. Of the six remaining bids, Holland's bid of \$593,519 was low and Holly's bid of \$657,212 was next low.

In Holland's bid, the company's owner, John L. Holland, initialled the top right-hand corner of the certification page, as well as the corner of virtually every other page of the bid. He also initialled the blank in the first paragraph of the certificate (seeking the name of the officer or employee responsible for the offer), and wrote "NONE" in response to the second paragraph's inquiry about violations or possible violations of the procurement integrity requirements.¹ No signature or initials were entered on the line at the bottom of the certificate marked "Signature of the Officer or employee responsible for the offer and date," nor was there any entry on the next line below, calling for the typewritten name of the signer.

Holly's initially filed an agency-level protest and, after the agency denied that protest, Holly's filed this protest with our Office. Contract award has been withheld pending resolution of the protest.

The agency determined that Holland's initials on the certificate page constituted adequate evidence of the bidder's intent to be bound and therefore proposed to make award to Holland as the low responsive bidder. The agency relied on our decision in David Morales, B-243791.3, Aug. 27, 1991, 91-2 CPD ¶ 202, in which we denied a protest

¹The first paragraph of the certificate also required that the solicitation number be filled in. The agency filled in that number before distributing the blank IFB to potential bidders.

challenging the adequacy of a Certificate of Procurement Integrity that had been initialled in the margin of the page.

As a result of the substantial legal obligations imposed on a contractor by the Certificate of Procurement Integrity, we have held that the certificate represents a material term of the solicitation. Mid-East Contractors, Inc., supra. The failure to execute the signature line of the certificate constitutes a failure to unequivocally commit the bidder to comply with the certificate's requirements and, thus, renders a bid nonresponsive. Koehler GmbH, B-246012, Feb. 12, 1992, 92-1 CPD ¶ ____; Consolidated Metal Prods., Inc., B-244543, July 15, 1991, 91-2 CPD ¶ 58; Mid-East Contractors, Inc., supra. As explained in Koehler, our opinion in Morales indicated nothing more than that, where the certificate form included in a solicitation was defective because no signature line was provided, use of the margin of the page by the certifier to provide the required commitment was a permissible improvisation to deal with those unique circumstances.

Here, Mr. Holland failed either to sign or to initial the signature line expressly provided in the certificate for that purpose. His initials in a corner of the page did not equate to a signature on the designated signature line of the certificate. To accept the initials in the first paragraph as a surrogate would render the signature line superfluous. In short, where a Certificate of Procurement Integrity contains a designated signature line, the failure of the bidder's representative to execute the certificate by properly signing it renders the bid nonresponsive. Koehler GmbH, supra.²

²The agency report includes an affidavit in which Mr. Holland asserts that his initials on the Certificate of Procurement Integrity indicated his intent to be bound by the requirements of the certificate. The affidavit was apparently prepared after bid opening and is dated several days after Holly's filed its agency protest. The fact that Mr. Holland saw fit to submit, after bid opening, an affidavit asserting that his initials were meant to indicate his intent to be bound by the certificate's terms suggests a recognition that the initials alone failed the required certification. A bidder is not permitted the option of deciding whether to comply with the certification requirements after bid opening. Mid-East Contractors, Inc., supra.

Because Holland failed to submit a properly executed Certificate of Procurement Integrity with its bid, the bid must be rejected as nonresponsive. We recommend that award be made to Holly's, as the low bidder, if otherwise appropriate. In addition, we find that Holly's is entitled to recover the costs of filing and pursuing this protest, including reasonable attorneys' fees. 4 C.F.R. § 21.6(d) (1991). Holly's should submit its claim for such costs directly to the agency.

The protest is sustained.

Milton J. Fowler
for Comptroller General
of the United States