



Comptroller General
of the United States

Washington, D.C. 20548

502186

Decision

Matter of: Schmidt Engineering & Equipment, Inc.;
Defense Logistics Agency--Reconsideration

File: B-250480.2; B-250480.3

Date: June 18, 1993

Thomas C. Wheeler, Esq., and Vincent S. Antonacci, Pettit & Martin, for Schmidt Engineering & Equipment, Inc.
Matthew Geary, Esq., Defense Logistics Agency, for the agency.
Sterling C. Scott, Esq., Jenner & Block, for Sweepster Jenkins Equipment Co., Inc.
James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Decision holding that the individual who signed a Certificate of Procurement Integrity did not have the required authority to bind the bidder at the time the bid was submitted is reversed, where on reconsideration the evidence establishes that the individual who signed the certificate was authorized to sign the certificate and bind the bidder.

DECISION

Schmidt Engineering & Equipment, Inc. and the Defense Logistics Agency (DLA) request reconsideration of our decision in Sweepster Jenkins Equip. Co., Inc., B-250480, Feb. 8, 1993, 93-1 CPD ¶ 111, in which we sustained the protest of Sweepster Jenkins Equipment, Co., Inc. against the proposed award of a contract to Schmidt under invitation for bids (IFB) No. DLA730-91-B-4017, issued by the Defense Logistics Agency, Defense Construction Supply Center (DCSC), for front-mounted rotary snow sweepers.

We reverse.

At issue in Sweepster's protest was the acceptability of the Certificate of Procurement Integrity accompanying Schmidt's bid. On its Standard Form (SF) 33, under the space provided for the name and title of the person authorized to sign the

bid, Schmidt's bid was signed by the company president, John W. Schlump. However, in the pertinent spaces of the certificate, Schmidt's bid was executed and signed by Scott Allen, manager of "Sales Support." The agency found Schmidt's bid responsive.

The Certificate of Procurement Integrity implements the Office of Federal Procurement Policy (OFPP) Act, 41 U.S.C. § 423(e) (1988 and Supp. III 1991), which precludes federal agencies from making award to a competing contractor unless the officer or employee of the contractor responsible for the offer or bid certifies in writing that neither he nor those employees who participated in the preparation of the bid has any information concerning violations or possible violations of the OFPP Act.

Sweepster protested that Schmidt failed to properly execute the certificate, and the bid should therefore be rejected as nonresponsive. The protester argued that Mr. Allen was not the same individual who signed Schmidt's bid, and thus could not be considered the official or employee responsible for Schmidt's bid who was required to execute the certificate.

In responding to the protest, DCSC argued that the OFPP Act did not prohibit separate individuals, both of whom have authority to bind the bidder, from signing the bid and the certificate. DCSC reported that, as a result of the protest, "the contracting officer requested Schmidt to furnish [an SF-129]," which lists the names of individuals authorized to sign contracts on Schmidt's behalf. Schmidt furnished DCSC an SF-129 dated October 7, 1992 (after bid opening), which listed Messrs. Schlump and Allen, as well as another individual, as persons authorized to sign contracts for Schmidt. Based upon this SF-129, DCSC found "no reason to question the authority of the named individuals to sign offers and contracts on behalf of Schmidt."

We found that nothing in the OFPP Act or its implementing regulations prohibiting different individuals from signing the bid and the certificate. In other words, the signature of different individuals on the bid and certificate will not render a bid nonresponsive so long as the individual signing the bid was authorized to do so, and the individual signing the certificate was "responsible for the bid," as specified in the clause, and was authorized to bind the bidder to the

terms of the certificate.¹ See Hutchinson Contr., B-251974, May 18, 1993, 93-1 CPD ¶ ____.

However, we concluded that Schmidt had not submitted a properly executed Certificate of Procurement Integrity because Mr. Allen apparently did not have the authority to obligate Schmidt. The only evidence in the record of Mr. Allen's authority was the SF-129 dated October 7, after bid opening. The record before our Office also contained evidence that Mr. Allen apparently lacked the requisite authority at the time of bid opening. For example, Schmidt did not explain why Mr. Allen was not the official who executed the bid, and Schmidt's correspondence during the course of the protest did not establish Mr. Allen's authority to bind that firm as of bid opening. Thus, the record before us lacked evidence that Mr. Allen possessed the authority to bind Schmidt to the legal obligations contained in the certificate at the time Schmidt submitted its bid. Schmidt's bid therefore could not be accepted.²

In requesting reconsideration, Schmidt and DCSC contend that our decision erred in concluding that Mr. Allen lacked the authority to sign contracts on Schmidt's behalf and bind Schmidt to the Certificate of Procurement Integrity. As proof of Mr. Allen's authority to bind Schmidt to the certificate, DLA has submitted a number of documents and affidavits it received from Schmidt after our initial decision, which show that Mr. Allen had the requisite authority to bind Schmidt as of bid opening. DCSC asserts that the contracting officer has reviewed the evidence of Mr. Allen's authority now submitted by Schmidt and determined that Mr. Allen possessed the appropriate authority. DCSC, in effect, contends that Schmidt's certificate cannot be said to be improperly executed, since evidence establishing the

¹The individual executing the certificate must have the authority to bind the bidder because of the significant legal obligations contained in the certificate, and the penalties imposed upon the certifying individual for violating the certificate, as well as the administrative penalties that might be imposed on the contractor for its employee's violation.

²Our decision also concluded that the IFB should be canceled and the requirement resolicited because we believed that Schmidt was reasonably misled by the certificate clause in the IFB, which requested the certifier to be the "officer or employee responsible for the preparation" of the offer, but did not state that the individual executing the certificate was required to have the authority to bind the company.

authority of a signatory on the certificate can be established any time after bid opening.

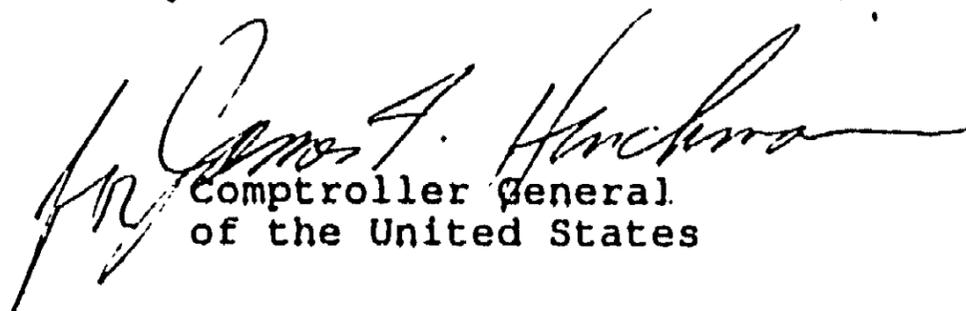
The current record reasonably establishes that Mr. Allen was authorized to bind Schmidt to the legal obligations contained in the certificate at the time of bid opening. Schmidt has provided DLA with several SF 129s filed with other agencies dated before the bid opening that clearly identify Mr. Allen as having the authority to bind the company. Schmidt has also provided a completed "vendor update" form which it asserts that it provided to DLA on December 10, 1991, showing that Mr. Allen had the authority to sign contractual documents on behalf of Schmidt. Schmidt has also provided several of the IFB's amendments which Mr. Allen acknowledged on behalf of Schmidt and which were provided with Schmidt's bid. Finally, Mr. Allen has submitted an affidavit verifying his authority to sign the certificate and Mr. Schlump has submitted an affidavit attesting that Mr. Allen had the requisite authority as of bid opening.

The protester argues that the evidence now presented by Schmidt concerning Mr. Allen's authority should not be considered. Sweepster points to cases such as Dep't of the Army--Recon., B-237742.2, June 11, 1990, 90-1 CPD ¶ 546, in which we declined to reconsider decisions based upon evidence that was not submitted during an initial protest, where the submitting party provided no justification for failing to provide the material earlier. In an affidavit, Mr. Allen, who represented Schmidt in its pro se participation in the initial protest, asserts that a representative of this Office advised him not to submit any evidence of his authority because it was not at issue in the protest. This allegation is flatly denied by the individual involved. However, DLA sought additional information from Schmidt and provided all relevant information in its possession during the protest, and DLA's initial decision to accept Schmidt's certificate, perhaps fortuitously, was correct. Under the circumstances, we will not bar DLA from presenting the evidence that came into its possession after our initial decision.

We have no legal basis to conclude that Schmidt improperly executed the certificate, since a bidder may establish after bid opening the authority of an individual to sign a certificate or bid. See W.G. Yates & Sons Constr. Co., B-248719, Aug. 11, 1992, 92-2 CPD ¶ 97; Cambridge Marine Indus., Inc., 61 Comp. Gen. 187 (1981), 81-2 CPD ¶ 517; see also Hutchinson Contr., supra (authority of individual to sign a certificate was submitted in response to a protest). While Sweepster questions the reliability of this information, its

mere speculation is insufficient to dispute the credibility of the information reasonably establishing Mr. Allen's authority. See Hutchinson Contr., supra.

The prior decision is reversed.


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