

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-186342

DATE: June 30, 1976

MATTER OF: F.P.D. Electric Corp.

DIGEST:

Where bidder signs affirmative action certification but indicates in certification that it does not intend to use any construction trade in performance of contract, bid is properly rejected as nonresponsive since at least one construction trade must be used to perform contract and it is doubtful that requisite commitment to affirmative action requirements of solicitation for that trade would exist upon acceptance of bid.

The F.P.D. Electric Corp. (F.P.D.) protests against the rejection of its low bid of \$12,990 under invitation for bids 03-6674-76, issued by the United States Coast Guard for alteration and installation of electrical equipment at the Coast Guard Station, East Moriches, New York. Award of a contract has been withheld pending our decision on the protest.

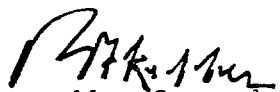
The solicitation contained a section entitled "BID CONDITIONS, AFFIRMATIVE ACTION REQUIREMENTS, EQUAL EMPLOYMENT OPPORTUNITY" which required bidders using one or more trades of construction employees to commit themselves to certain affirmative action requirements by executing a certification included in the invitation for that purpose. In paragraph 1 of the certification, bidders were to list the trades intended to be used "in the work under the contract"; in paragraphs 2(a) and 2(b), bidders were to indicate, with respect to each such trade, whether they would comply with a hometown plan known as the Nassau-Suffolk Plan under Part I of the Bid Conditions or would adopt the minimum minority manpower utilization goals and specific affirmative action steps under Part II of the Bid Conditions. The F.P.D. bid contained a signed certification; however, in paragraph 1, where the trades to be used were to be listed, the protester wrote "None," and left paragraphs 2(a) and 2(b) blank. The contracting officer rejected the bid because he believed the certification as executed by F.P.D. did not evidence the required commitment for the trade(s) to be used to perform the contract.

F.P.D. explains that it inserted the word "none" in the certification because it believed that "trades" referred to subcontractors and it did not intend to subcontract any of the work. It now admits that it misinterpreted the word "trades" and erred in writing the word "none," but asserts that it fully intended to comply with the Bid Conditions and that the bid should be regarded as responsive because it signed the certification.

We have consistently held that the failure of a bidder to commit itself, prior to bid opening, to affirmative action requirements of a solicitation requires rejection of the bid as nonresponsive. Veterans Administration re Welch Construction, Inc., B-183173, March 11, 1975, 75-1 CPD 146; 52 Comp. Gen. 874 (1973); 50 Comp. Gen. 844 (1971). The courts have taken a similar view. See Northeast Construction Co. v. Ronney, 485 F. 2d 752 (D.C. Cir. 1972); Rossetti Contracting Co., Inc. v. Brennan, 508 F. 2d 1039 (7th Cir. 1975). The fact that a bidder may have intended to commit itself to those requirements will not save the bid if the bid does not clearly evidence that commitment. See, e.g., 52 Comp. Gen. 874, supra; B-176260, August 2, 1972.

Here, we do not believe that acceptance of F.P.D.'s bid would result in the requisite commitment. It is apparent that at least one construction trade (electrical workers) must be used to perform the contract. However, F.P.D. in its bid certified only that it intended not to use any construction trade. We think it is, at best, doubtful that such a certification, merely because it is signed, can give rise to a commitment to comply with either Part I or Part II of the Bid Conditions for the trade(s) that actually will be used. Cf., John E. Northrop Co., B-181674, August 6, 1974, 74-2 CPD 82. Accordingly, we believe the contracting officer's determination that F.P.D.'s bid should be rejected was correct and not subject to legal objection.

The protest is denied.


Deputy Comptroller General
of the United States