

DECISION



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

01335
98690

FILE: B-186964

DATE: August 12, 1976

MATTER OF: Veterans Administration--request for advance decision

DIGEST:

Bidder's failure to submit signed certification that it would comply with affirmative action requirements renders bid nonresponsive and compliance with certification requirement in other solicitations does not suffice to obtain commitment for instant procurement.

The Veterans Administration (VA) has requested an advance decision whether it can accept the apparent low bid for building modernization at its Sepulveda, California, hospital. The low bidder did not sign the certification submitted with the bid to evidence its commitment to specific affirmative action.

As pertinent, preceding the certification, the IFB cautioned:

"* * * A Bidder will not be eligible for award of a contract under this Invitation for Bids unless such bidder has submitted as a part of its bid the following certification * * *."

Also, the Bid Conditions relating to equal employment opportunity stated:

"To be eligible for award * * *, a bidder or sub-contractor must execute the certification required by Part III hereof [certification]."

The low bidder, Bernard Bros. Inc. (Bernard) at \$52,980, listed in the certification the applicable trades it intended to use. Bernard indicated in the appropriate space that it agreed to adopt the requisite minority manpower utilization goals and take the appropriate affirmative actions required by the provisions for all of the trades intended to be used. However, Bernard did not sign the certification. The only other bidder, W. H. Evans Contractor, submitted a fully completed certification with its bid of \$54,039.

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VA has recommended that it be permitted to waive Bernard's failure to sign the certification as a minor informality. Additionally, VA notes that the goals and timetables stated in the IFB expired June 30, 1975. Also, VA states that Bernard submitted signed certifications in connection with other IFB's on June 2 and 11, 1976, which should suffice for the purposes of this IFB.

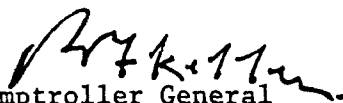
When an IFB makes compliance with the affirmative action provisions a matter of responsiveness, the failure of a bidder to demonstrate compliance as of bid opening requires rejection of the bid as nonresponsive. O.C. Holmes Corporation, B-184233, September 23, 1975, 75-2 CPD 174, and cases cited therein. The proposition is well settled that matters of responsiveness may not be waived as minor informalities within the meaning of Federal Procurement Regulations § 1-2.403 (1964 ed. circ. 1). Moreover, previous compliance with the certification requirement on other solicitations, or even actual compliance, is not sufficient to obtain the necessary commitment for the instant procurement. Wilpar Construction Company, B-184582, January 28, 1976, 76-1 CPD 56.

Finally, the affirmative action goals and timetable stated in the IFB list as the last year the period from July 1, 1974, to June 30, 1975. VA interprets this to mean that the entire plan expired on June 30, 1975. However, the provision used in the IFB, provides:

"In the event that under a contract which is subject to these Bid Conditions any work is performed in a year later than the latest year for which acceptable goals of minority manpower utilization have been determined herein, the goals of 1974-1975 shall be applicable to such work."

It is clear that this language extends the applicability of the goals as applied to this procurement.

In view of the above, Bernard's bid must be rejected as nonresponsive.


Deputy Comptroller General
of the United States