



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Nomura Enterprise Inc.

**File:** B-244993; B-245521

**Date:** September 6, 1991

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Al Weed for the protester.

Vera Meza, Esq., and Barry Dean, Esq., Department of the Army,  
for the agency.

Guy R. Pietrovito, Esq., Office of the General Counsel, GAO,  
participated in the preparation of the decision.

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### DIGEST

procuring agency properly canceled an invitation for bids after bid opening where the solicitation's Certificate of Procurement Integrity failed to provide a signature line or space, misleading the low bidder and others that failed to sign the certificate, and where the record indicates that the low bidder, apart from signing the certificate, was otherwise responsive and eligible for award.

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### DECISION

Nomura Enterprise Inc. protests the cancellation after bid opening of invitation for bids (IFB) No. DAAA21-91-B-0006 (-0006), issued by the U.S. Army Armament Munitions and Chemical Command, for fabrication of various quantities of metal parts used on the M139 Multiple Delivery Mine System. Nomura also protests the opening of bids on IFB No. DCAA21-91-B-0010 (-0010), the resolicitation of this requirement.

We dismiss the protests.

IFB -0006 contained the Certificate of Procurement Integrity clause, as set forth in Federal Acquisition Regulation (FAR) § 52.203-8, and advised offerors that the "[f]ailure of a bidder to submit the signed certificate with its bid shall render the bid nonresponsive."<sup>1/</sup> The certificate only

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<sup>1/</sup> The Certificate of Procurement Integrity was contained in section L (Instructions, conditions, and notices to bidders) rather than in section K (Representations, certifications, and other statements of bidders) as required by FAR § 14.201-5.

provided space for listing violations or possible violations of the Office of Federal Procurement Policy (OFPP) Act and did not provide a space for bidders' signatures or identify where bidders should sign the certificate.

The Army received five bids on IFB -0006, including Nomura's, by the July 11 bid opening date. Nomura, the second low bidder, was the only bidder to sign the certificate. The Army determined that the failure of the IFB's Certificate of Procurement Integrity clause to provide a signature line or space for a signature, despite that clause's parenthetical request for the "signature of the officer or employee responsible" for the certification, was a latent ambiguity that required the cancellation of the IFB. See Shifa Servs. Inc., B-242686, May 20, 1991, 70 Comp. Gen. \_\_\_, 91-1 CPD ¶ 483.

Nomura protests that the Army did not have a compelling reason to cancel IFB -0006 after bid opening. Nomura argues that merely because the certificate failed to provide a signature line or space for a signature does not render the certificate ambiguous or misleading and that, even if the certificate is defective, cancellation is improper because an award under the IFB would meet the government's actual needs and there is no showing of prejudice to other bidders.<sup>2/</sup> Nomura argues that award to it, as the second low bidder, would not prejudice Fort Belknap Industries, the low bidder, because Fort Belknap would not be eligible for award as a manufacturer or regular dealer under the Walsh-Healey Public Contracts Act, 41 U.S.C. § 35 et seq. (1988).<sup>3/</sup>

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<sup>2/</sup> The Army originally solicited the IFB's requirements under an earlier invitation for bids, DAAA21-91-B-0001, which the Army canceled after bid opening because of a substantial reduction in required quantities and the expiration of the bid acceptance period. No bidder protested the cancellation of this first solicitation. Nomura now contends that cancellation of the earlier solicitation was improper. This protest allegation, which was not filed within 10 working days of the date that Nomura learned of the cancellation of the solicitation, is dismissed as untimely under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1991).

<sup>3/</sup> The Walsh-Healey Act requires, among other things, that contracts for supplies be awarded to manufacturers or regular dealers.

It is true that an agency should not cancel an IFB after bid opening absent a compelling reason. FAR § 14.404-1(a); Flintstone Crushing and Constr. Co., B-241803, Feb. 26, 1991, 91-1 CPD ¶ 216. In Shifa Servs., Inc., supra, we found that the failure of an IFB's Certificate of Procurement Integrity clause to provide a signature line or space for a signature, despite a parenthetical request for the "signature of the officer or employee responsible" for the certification, was a latent ambiguity that required cancellation of the IFB after bid opening.<sup>4/</sup> See also Krielow Bros., Inc.; King Fisher Marine Serv., Inc., B-243384; B-243384.2, June 21, 1991, 91-1 CPD ¶ 591.

Here, as in Shifa Servs., Inc., supra, the record indicates that the failure of the certificate to provide a signature line or space for a signature misled bidders, including Fort Belknap, concerning the requirement for a separate signature. Fort Belknap, while not signing the certificate, otherwise completed the certificate by certifying that it was unaware of any violations or possible violations of the OFPP Act, and the record shows that, apart from the failure to sign the certificate, the low bid was otherwise responsive. Furthermore, the Army states that it conducted a pre-award survey of Fort Belknap that indicates that the firm would be eligible for award as a manufacturer under the Walsh-Healey Act.<sup>5/</sup> Under the circumstances, we find that the low bidder, which would have been eligible for award but for its failure to sign the certificate, was prejudiced by the certificate's latent ambiguity and that this is a compelling reason to cancel the IFB after bid opening.<sup>6/</sup>

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4/ While it is true that we did not state in Shifa Servs., Inc., supra, that the certificate's ambiguity was a compelling reason to cancel the IFB after bid opening, that is the reason we required cancellation in that case.

5/ Since the agency canceled the IFB, there is no requirement that the contracting officer forward Nomura's concerns regarding the Walsh-Healey Act eligibility of Fort Belknap, a small business, to the Small Business Administration.

6/ Nomura also argues for the first time in response to the agency's request for summary dismissal that Fort Belknap may be nonresponsible and therefore would be ineligible for award on this basis. This ground of protest is untimely since it was not raised within 10 working days of the date on which Nomura learned that the Army canceled the IFB because the low bidder had been prejudiced by the certificate's latent ambiguity. See 4 C.F.R. § 21.2(a)(2). In any event, the protester has provided no information indicating why it believes Fort Belknap would be nonresponsible.

Since the cancellation of IFB -0006 was proper, there is no legal basis for Nomura's protest of the opening of bids on IFB -0010.

The protests are dismissed.

  
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