



Comptroller General  
of the United States

Washington, D.C. 20548

*Susan McAuliffe*

## Decision

**Matter of:** 224 Builders, Inc.

**File:** B-245569

**Date:** December 11, 1991

Harry Greenbaum, Esq., for the protester.  
Joseph J. Kokolakis, for J. Kokolakis Contracting, Inc., an interested party.  
Michael R. Nevarez, Esq., and William H. Campbell, United States Department of Transportation, United States Coast Guard, for the agency.  
Susan K. McAuliffe, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Bidder's failure to complete solicitation's Certificate of Procurement Integrity renders its bid nonresponsive since completion of the certificate imposes material legal obligations upon the bidder to which it is not otherwise bound.

### DECISION

224 Builders, Inc. protests the rejection of its bid as nonresponsive for failure to include a signed Certificate of Procurement Integrity as required by invitation for bids (IFB) No. DTCG81-91-B-3WA134, issued by the United States Department of Transportation, United States Coast Guard, for building renovations at the Coast Guard Support Center, Governors Island, New York.

We dismiss the protest.

The IFB, issued on July 18, 1991, incorporated the Certificate of Procurement Integrity Clause, Federal Acquisition Regulation (FAR) § 52.203-8, as required by FAR § 3.104-10. This clause implements 41 U.S.C. § 423(e)(1) (Supp. I 1989), a statute that 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 Office of Federal Procurement Policy (OFPP) Act provisions set

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forth elsewhere in 41 U.S.C. § 423. 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. Under FAR § 52.203-8, bidders are required to complete the certificate, where indicated, by identifying the individual certifier, providing the solicitation number and the name of the offeror, listing all violations or possible violations of the OFPP Act (or entering "none" if none exists), and signing the certificate. FAR § 3.104-9(b)(3) provides that for procurements using sealed bidding procedures, as here, a signed procurement integrity certification "shall be submitted by each bidder with the bid submission . . . ." FAR § 14.404-2(m) provides that "[a] bid shall be rendered nonresponsive and rejected if the bidder fails to submit the signed certificate . . . with its bid."

Eighteen bids were received by the August 19 bid opening date. 224 Builders submitted the apparent low bid, but failed to submit a signed Certificate of Procurement Integrity with its bid. The protester's bid was rejected by the Coast Guard, by letter of August 21, as nonresponsive. 224 Builders filed an agency-level protest of the rejection of its bid, which the agency denied on September 4. On September 9, the protester filed a protest with our Office challenging the agency's rejection of its bid.

The protester contends that its bid was improperly rejected as nonresponsive and that it was misled by the certificate's failure to provide a distinct signature line. The protester argues that since it provided information on its certificate, on the lines provided for that information, indicating the person authorized to sign the certificate and the firm's name, and since the person authorized to sign the certificate signed the firm's bid, the firm satisfied the requirement for a signed procurement integrity certificate and is committed to perform in accordance with the certificate's terms.

The agency contends that it properly rejected 224 Builders' bid for failure to include a signed certificate, as required by FAR § 3.104-9(b)(3), which provides that a signed procurement integrity certification "shall be submitted by each bidder with the bid submission" for procurements using sealed bidding procedures. The agency asserts that the rejection of the protester's bid is required by FAR § 14.404-2(m), which directs that "[a] bid shall be rendered nonresponsive and rejected if the bidder fails to submit the signed certificate . . . with its bid." The agency also cites a recent decision by our Office, General Kinetics, Inc., Cryptek Division, B-244148, Aug. 19, 1991, 91-2 CPD ¶ 166, in which we upheld an agency's rejection of a bid as

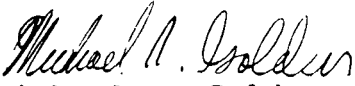
nonresponsive where the bidder failed to submit a separately signed procurement integrity certificate with its bid, even though the bidder had completed several portions of the certificate.

The certification's requirements obligate a named individual--the officer or employee of the contractor responsible for the bid--to become familiar with the prohibitions of the OFPP Act, and impose on the bidder and its representative, a requirement to make full disclosure of any possible violations of the OFPP Act, and to certify to the veracity of that disclosure. In addition, the signer of the certification is required to collect similar certifications from all other individuals involved in the preparation of bids or offers. The certification provisions also prescribe specific contract remedies--including withholding of profits from payments and terminating errant contractors for default--not otherwise available. These provisions, which impose substantial legal obligations on the contractor, are materially different from those to which the bidders otherwise are bound; accordingly, the requirement for a separate, signed and completed Certificate of Procurement Integrity to be submitted with the bid submission, is a material requirement of the IFB that affects the bid's responsiveness. See Shifa Servs., Inc., B-242686, May 20, 1991, 70 Comp. Gen. \_\_\_\_\_, 91-1 CPD ¶ 483. We thus have found that a bid is properly rejected as nonresponsive for the bidder's failure to submit a signed Certificate of Procurement Integrity with its bid, even though the bidder signed its bid and acknowledged the amendment that added the certification requirement to the solicitation. Mid-East Contractors, Inc., B-242435, Mar. 29, 1991, 70 Comp. Gen. \_\_\_\_\_, 91-1 CPD ¶ 342.

The protester contends its bid is responsive and should not have been rejected for failure to submit a signed certificate, on the sole basis that the IFB did not provide a distinct signature line. However, the protester has not shown that it was misled by the omission of such a line. In this regard, the record shows that the protester also failed to fill out the portion of the certificate--where distinct lines were provided for the requested information--for listing violations or possible violations of the OFPP Act or inserting the word "none" if such is the case. This omission suggests that the protester may have elected not to execute the certificate. See Inland Serv. Corp., B-242993, June 25, 1991, 91-1 CPD ¶ 601 (where we found that the bidder was not misled by the IFB's failure to provide a distinct signature line on the procurement integrity certificate since the bidder also failed to provide other expressly requested information--regarding OFPP Act violations--where distinct lines existed for that information).

Although 224 Builders' certificate identifies the individual it considers responsible for the additional requirements imposed by the terms of the certificate, that individual did not fully complete and sign the certificate and thus did not establish his intention to be bound to the terms of the certificate and, clearly, did not obligate himself to fulfilling those requirements. Since 224 Builders did not submit a signed, completed certificate, the agency properly rejected 224 Builders' bid as nonresponsive. See Mid-East Contractors, Inc., supra.

The protest is dismissed.

  
Michael R. Golden  
Assistant General Counsel