



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Three D. Industrial Maintenance Corporation--
Reconsideration

File: B-245422.2

Date: February 6, 1992

Gregg S. Baker, Esq., Shamberg, Marwell, Cherneff, Hocherman & Davis, P.C., for the protester.
Behn Miller, Esq., and Andrew T. Pogany, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where solicitation's Certificate of Procurement Integrity failed to provide a signature line--and accordingly misled bidders to believe a separate signature on the certificate was not required--procuring agency properly canceled an invitation for bids; protester's requested corrective action on reconsideration--that the solicitation be reinstated and that it be permitted to submit a properly signed certificate and receive contract award as the low bidder--is denied since such action would prejudice the integrity of the competitive bidding system by giving otherwise successful bidders a second opportunity to walk away from a low bid.

DECISION

Three D. Industrial Maintenance Corporation requests reconsideration of our October 4, 1991, dismissal of its protest challenging the rejection of its bid as nonresponsive under invitation for bids (IFB) No. 620-9-91, issued by the Department of Veterans Affairs (VA) for construction services to replace water distribution valves at the F.D.R. VA Hospital, Montrose, New York. We dismissed the protest as academic following VA's cancellation of the solicitation. On reconsideration, Three D. requests that we recommend that VA reinstate the solicitation and allow the firm to submit a properly executed Certificate of Procurement Integrity and receive contract award as the otherwise successful low bidder.

We deny the request for reconsideration.

In its original protest to this Office--filed August 28, 1991--Three D. argued that its bid had been improperly rejected as nonresponsive for failure to properly complete the solicitation's Certificate of Procurement Integrity. After receiving a copy of that protest, VA discovered that the IFB's Certificate of Procurement Integrity clause did not contain a signature line and accordingly misled the protester--and other bidders--to believe that a separate signature on the certificate was not required. In light of this finding, and based on our decision in Shifa Servs., Inc., 70 Comp. Gen. 502 (1991), 91-1 CPD ¶ 483, where we stated that a defective certificate form requires cancellation of the underlying solicitation and resolicitation with a proper certificate form, VA canceled the IFB on October 3. That same day, VA notified both this Office and the protester that the agency would resolicit the requirement using a distinct signature line on the required Certificate of Procurement Integrity. In light of this cancellation, we dismissed Three D.'s protest as academic.

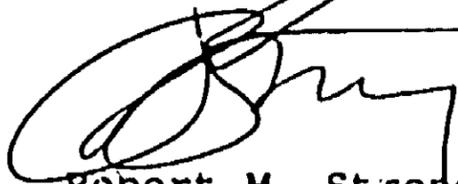
On reconsideration, Three D. argues that cancellation and resolicitation of the IFB is an improper corrective remedy in this case since Three D.'s bid price has been exposed to the other competitors.

The Certificate of Procurement Integrity clause, Federal Acquisition Regulation (FAR) § 52.203-8 (FAC 90-5), 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 has any information concerning violations or possible violations of the Office of Federal Procurement Policy (OFPP) Act provisions set forth elsewhere in 41 U.S.C. § 423. Although the OFPP Act itself only provides that a federal agency may not award a contract without the certification, see 41 U.S.C. §§ 423(e)(1); (2), the implementing regulations in the FAR specifically require that when agencies use sealed bidding procedures, each bidder must submit a signed certificate with its bid. FAR § 52.203-8(c)(1).

Because the Certificate of Procurement Integrity imposes additional legal requirements upon the bidder materially different from those to which the bidder is otherwise bound, either by its offer or by law, completion of the Certificate of Procurement Integrity concerns a matter of bid responsiveness. See FAR § 14.404-2(m); Mid-East Contractors, Inc., 70 Comp. Gen. 383 (1991), 91-1 CPD ¶ 342. As such, bidders may not be permitted to submit completed certificates after bid opening since such action would prejudice the integrity of the competitive bidding system by

giving otherwise successful bidders a second opportunity to walk away from a low bid. See Mid-East Contractors, Inc., supra; American Dredging Co., B-244790, Oct. 29, 1991, 91-2 CPD ¶ 396. Accordingly, where a solicitation defect prevents bidders from properly complying with the procurement integrity certification requirement at the time of bid opening--for example, where the actual certificate lacks the requisite blanks or lines for signature--the solicitation must be canceled and resolicited. See Shifa Servs., Inc., supra; Nomura Enter. Inc., B-244993; B-245521, Sept. 6, 1991, 91-2 CPD ¶ 216; Krielow Bros., Inc.; King Fisher Marine Serv., Inc., B-243384; B-243384.2, June 21, 1991, 91-1 CPD ¶ 591. In this regard, we also note that where, as here, the cancellation after prices are exposed is in accord with the governing legal requirements, the agency does not create an impermissible auction on resolicitation. See Hawkins Builders, Inc., B-237680, Feb. 5, 1990, 90-1 CPD ¶ 154.

The request for reconsideration is denied.



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