



Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: Aerospace Design Inc.

File: B-259350

Date: March 23, 1995

Loren S. Russakov for the protester.
Vera Meza, Esq., and Bradley J. Crosson, Esq., Department of the Army, for the agency.
Richard P. Burkard, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Bid was properly rejected as nonresponsive where its certificate of procurement integrity identified one person as the certifier but was signed by a different person; the improperly executed certificate failed to unequivocally bind the bidder to perform in accordance with the substantial legal obligations imposed by the certificate.

DECISION

Aerospace Design Inc. protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. DAAA09-93-B-0450, issued by the Department of the Army for MK 39 Safety and Arming Devices. Aerospace contends that the agency improperly found its procurement integrity certification to be deficient.

We deny the protest.

The IFB contained the full text of the Certificate of Procurement Integrity clause, Federal Acquisition Regulation (FAR) § 52.203-8. The clause implements the Office of Federal Procurement Policy (OFPP) Act, 41 U.S.C. § 423(a) (1988 and Supp. V 1993), which precludes federal agencies from making award to a competing contractor unless the officer or employee of the contractor responsible for the offer or bid certifies in writing that neither he nor those employees who participated in the preparation of the bid has any information concerning violations or possible violations of the OFPP Act. Sweepster Jenkins Equip. Co., Inc., B-250480, Feb. 8, 1993, 93-1 CPD ¶ 111.

The certification requirement obligates the officer or employee responsible for the bid or offer to become familiar

with the prohibitions of the OFPP Act, and imposes a requirement to make full disclosure of any possible violations of the OFPP Act. Mid-East Contractors, Inc., 70 Comp. Gen. 383 (1991), 91-1 CPD ¶ 342. Additionally, the signer of the certificate is required to collect similar certifications from all other individuals involved in the preparation of the bid or offer. 41 U.S.C. § 423(e)(1)(B).

The certification clause incorporated in the IFB stated, in pertinent part, the following:

"Certificate of Procurement Integrity

"(1) I, _____ (Name of Certifier), am the officer or employee responsible for the preparation of this offer and hereby certify that, to the best of my knowledge and belief, . . . I have no information concerning a violation of . . . the [OFPP] Act . . . occurring during the conduct of this procurement. . . .

"(2) . . . I further certify that, to the best of my knowledge and belief, each officer, employee, agent, representative, and consultant of _____ (Name of Offeror), . . . has certified that he or she is familiar with, and will comply with, the requirements of . . . [the OFPP] Act . . . , and will report immediately to me any information concerning a violation or possible violation of . . . [the OFPP] Act . . . pertaining to this procurement.

"(4) I agree that, if awarded a contract under this solicitation, the certifications required by . . . the Act shall be maintained in accordance with paragraph (f) of this provision.

(Signature of the Officer or Employee Responsible for the Offer and date)

(Typed name of the Officer or Employee Responsible for the Offer and date)

"THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, UNITED STATES CODE, SECTION 1001."

Aerospace submitted the low bid. Upon review of the bid, however, the agency found a defect in Aerospace's execution of the solicitation's Certificate of Procurement Integrity. Specifically, the certificate listed the President of Aerospace, Loren S. Russakov, as the "certifier" and as the "Officer or Employee Responsible for the Offer," but the signature of Aerospace's vice president, Larry Gasior, appeared on the line designated for the "Signature of the Officer or Employee Responsible for the Offer." Mr. Gasior appeared to be signing "for" Mr. Russakov. Because the certificate identified one person as the certifier but was signed by a different person, the agency found the certification defective and rejected the bid as nonresponsive.

The protester contends that its low bid should have been accepted, asserting that the use of two names was immaterial since both persons have authority to bind the company. Aerospace argues that the vice president's signature was on behalf of the company, not the president. The protester argues that the signer, so long as he has authority to obligate the corporation, establishes the corporate obligation of the bidder when he signs the certificate. The protester concludes that the vice president's signature obligated Aerospace.

We find no merit to the protester's argument that Mr. Gasior's signature as an authorized agent of Aerospace constituted an effective execution of the certificate. The identity of the certifier must be clear if the certificate is to have validity, notwithstanding the authority of the signatory of the certificate to bind the bidding company. North Cent. Constr., Inc., B-256839, July 5, 1994, 94-2 CPD ¶ 9. The provisions of the certificate of procurement integrity are materially different from those to which the bidder is otherwise bound. Mid-East Contractors, Inc., supra. While the protester now states that Mr. Gasior was the certifier, the face of the certificate did not list him as the "certifier" or the "Officer or Employee Responsible for the Offer." Rather, the certificate purported to be executed by Mr. Russakov. Thus, the protester's position in the protest itself demonstrates that the identity and commitment of the individual who will be the focus of the OFPP Act's obligations is unclear.

With respect to Mr. Russakov, while he appeared from the face of the bid to be the "certifier" or responsible officer, he failed to sign the certificate. The failure of the bidder's representative to execute the certificate by properly signing it renders the bid nonresponsive. Holly's Inc., B-246444, Mar. 4, 1992, 92-1 CPD ¶ 261. While there is an indication that Mr. Gasior signed on behalf of or "for" Mr. Russakov, as stated, Aerospace does not claim that this signature committed Mr. Russakov to satisfying the obligations imposed by the OFPP Act as the certifier or responsible officer. In any event, the OFPP Act contemplates that the certification be executed personally since it requires an individual to certify "to the best of my knowledge and belief" that he or she has no information of possible violations, that individuals who have participated in the preparation of the offer have certified that they are familiar with and will comply with the Act, and will report future violations. Moreover, the making of a false certification could render the certifier subject to prosecution. Thus, in our view, the execution of the certificate is an act required to be performed personally. See State v. Tedesco, 175 Conn. 279, 397 A.2d 1352 (1978) (taking of an oath is an act which may not be delegated to an agent). Accordingly, consistent with the protester's position, we cannot conclude that Mr. Russakov executed the certificate.

In sum, since Aerospace's manner of execution of the certificate created doubt about whether one individual representative of the bidder had made an unequivocal commitment to satisfy the substantial legal obligations imposed by the OFPP Act, the bid was properly rejected as nonresponsive.

The protest is denied.

\s\ Michael R. Golden
for Robert P. Murphy
General Counsel