

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D. C. 20548

FILE: B-186573

DATE: July 20, 1976

61141

97903

MATTER OF: Bryan L. and F.B. Standley

DIGEST:

1. Where husband and wife submit identical low bids on various items, there is no violation of Certificate of Independent Price Determination where bid submission is based on legitimate business reasons and where there is no evidence of conspiracy to restrict competition.
2. Completion after bid opening of representations and certifications on reverse of Standard Form 33 bid form is proper since they do not relate to bid responsiveness and failure to submit them with bid may be waived as minor informality.
3. Failure to submit completed experience questionnaire with bid does not render bid nonresponsive since questionnaire pertains solely to bidder's responsibility and may be submitted up to time for award.
4. Absent allegation of fraud on part of contracting officials or definitive responsibility criteria which allegedly have not been applied, this Office will not review affirmative determination of responsibility.

This protest has been filed by Bryan L. and F.B. Standley against the proposed award of a contract to Kathleen Brown by the U.S. Forest Service under invitation for bids (IFB) No. R1-14-76-47, issued by the Kootenai National Forest, Libby, Montana.

The subject solicitation requested bids for all necessary services to perform fire hazard reduction and site preparation in that Forest's Rexford Ranger District at various locations delineated in the schedule as items 1, 2, and 3.

Upon the opening of bids, it was revealed that Kathleen M. Brown was the low bidder on item 2, and that she and her husband, George A. Brown, had submitted identical low eligible bids for items 1 and 3.

Subsequent to bid opening, the contracting officer contacted the Browns to request an explanation for their separate bids as well as for their identical bids on items 1 and 3. George Brown reported that there had been a "mix-up" in that Kathleen was supposed to have bid only on item 2 but had copied George's bid on items 1 and 3 onto her bid. The contracting officer was further advised that the intent of the Browns was not to fix prices, obtain a competitive bidding advantage or otherwise act in contravention of the Certificate of Independent Price Determination in the bid package, but rather to obtain some contracts in Kathleen's name so that income might be allocated to her for purposes of tax and estate planning.

The tie bids between Kathleen and George Brown were broken through a drawing in which Kathleen prevailed on both items 1 and 3. Accordingly, the Forest Service proposes to award her a contract encompassing the entirety of the work set out in items 1, 2, and 3.

The protesters have objected to the proposed award, contending that it would be in violation of the Certificate of Independent Price Determination and would therefore compromise the integrity of the competitive bidding system because Kathleen's bid prices on items 1 and 3 were copied from her husband's bid. The protesters further contend that Kathleen's bid was nonresponsive because the reverse side of Standard Form 33, the bid form, which contained various representations, certifications and acknowledgments pertaining to a bidder's status as a small business and a regular dealer or manufacturer, as well as other provisions pertaining to contingent fees, type of business organization, affiliation and identifying data, equal opportunity, and Buy American, had not been completed.

The protesters also state that award to Kathleen would be improper because she intended to bid on item 2 only but failed to qualify her bid on page 10 of the invitation where bidders could limit their bids to a designated total number of acres; because she failed to complete an "experience questionnaire" in the bid package; and because she is not qualified to perform the prospective contract and cannot be considered a "responsible" prospective contractor.

In the Certificate of Independent Price Determination submitted by Kathleen Brown as part of her bid, she warranted that the prices in her offer were independently computed without consultation or agreement, for purposes of restricting competition, with any other bidder, and that the prices quoted were not knowingly disclosed to any other offeror or competitor. We have held, in considering the submission of multiple bids by affiliated concerns in light of this Certificate, that the multiple bids of such concerns are not required to be rejected because of such affiliation when their submission is not prejudicial to either the Government or other bidders, and that the subject certification is to be construed only as indicating that the prices quoted by the affiliated bidders were not discussed with or communicated to any competitor of the affiliated parties or to any prospective bidder other than themselves, and that no attempt has been made to induce any other concern to submit or refrain from submitting an offer for the purpose of restricting competition. 51 Comp. Gen. 403 (1972); Grimaldi Plumbing and Heating Company, Inc., B-183642, May 20, 1975, 75-1 CPD 307. Here it appears that the bids of George and Kathleen Brown were submitted for legitimate business reasons, and there is no indication in the record that the submission of those bids was intended to or actually did result in restriction on competition. Therefore, we must conclude that acceptance of Kathleen's bid is not precluded by the Certificate of Independent Price Determination.

With regard to Kathleen Brown's failure to complete the various representations and certifications on the back of the face of the bid form prior to bid opening (she did so approximately 1 month after bid opening), the contracting officer considered these deficiencies to be minor informalities or irregularities, the correction or waiver of which would not be prejudicial to other bidders, in accordance with Federal Procurement Regulations (FPR) § 1-2.405 (1964 ed.). That section provides:

"§ 1-2.405 Minor informalities or irregularities in bids.

"A minor informality or irregularity is one which is merely a matter of form and not of substance or pertains to some immaterial or inconsequential defect or variation of a bid from the exact requirement of the invitation for bids, the correction or waiver of which would not be

prejudicial to other bidders. The defect or variation in the bid is immaterial and inconsequential when its significance as to price, quantity, quality, or delivery is trivial or negligible when contrasted with the total cost or scope of the supplies or services being procured. The contracting officer shall either give the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive such deficiency, whichever is to the advantage of the Government. * * *


The contracting officer's position is correct. We have repeatedly held that completion of the subject representations and certifications is not required to determine whether a bid meets the requirements of the specifications or other solicitation provisions and therefore does not affect responsiveness of the bid, with the result that the failure to complete such items may be waived or cured after bid opening. See Tennessee Valley Service, Inc., B-186380, June 25, 1976, 76-1 CPD ____; Allis Chalmers Corporation, 53 Comp. Gen. 487, 74-1 CPD 19. Accordingly, the post-bid opening completion of the certifications is not legally objectionable.

Neither would award to Kathleen be objectionable because she did not limit the amount of acreage to be awarded her. The IFB provided on page 10 that "Bidders who bid on more than one bid item may * * * limit the total number of acres for which they will be obligated to accept a contract." There followed a space in which bidders could insert the maximum acreage they would accept under the contract. The protesters claim that since Kathleen intended to bid only on item two, her bids on items 1 and 3 should have been accompanied by completion of the acreage limitation provision. This argument is without merit. There was no requirement that the provision be completed. Whatever Kathleen's original intentions, by submission of her bid she obligated herself, upon acceptance of the bid, to perform with respect to each of the three items. Furthermore, the record shows that Kathleen has extended the period for acceptance of her bid, thereby indicating her intent that her bid as submitted is a firm and irrevocable offer. Moreover, even if Kathleen's bid is modified to delete either items 1 or 3 or is permitted to be withdrawn in its entirety, we fail to discern any effect on the protester's prospect as a potential contractor inasmuch as George Brown's bid would then supplant his wife's as the low eligible bid.

The experience questionnaire that Kathleen failed to complete requested information regarding years of experience, projects completed within the past 3 years, and work force available to perform the contract. It is clear that the intent of the questions is to assist the contracting agency in determining a bidder's capacity and overall qualifications to perform the prospective contract. Such information pertains solely to the bidder's responsibility and therefore may be furnished up to the time of award. See, e.g., 52 Comp. Gen. 647 (1973); L. Reese and Sons, Inc., B-182050, November 11, 1974, 74-2 CPD 255; Associated Refuse and Compaction Service, Inc., B-181496, December 16, 1974, 74-2 CPD 345; B-165185, December 12, 1968. Thus, Kathleen's failure to submit the completed questionnaire with her bid does not permit rejection of her bid for that reason.

With regard to Kathleen Brown's capability to perform the contract (responsibility), the record shows that the contracting officer determined pursuant to FPR 1-1.1200 et seq. that Kathleen had the requisite ability to obtain the resources required to satisfactorily perform the contract by virtue of her access to the family equipment, and that she was a responsible prospective contractor. This Office does not review protests against affirmative determinations of responsibility unless either fraud is alleged on the part of procuring officials or where the solicitation contains definitive responsibility criteria which allegedly have not been applied. See Central Metal Products, Incorporated, 54 Comp. Gen. 66 (1974), 74-2 CPD 64; Shiffer Industrial Equipment, Inc., B-185372, January 27, 1976, 76-1 CPD 52. This policy was adopted by our Office because normally responsibility determinations are based in large measure on subjective business judgments which are largely within the discretion of procuring officials and which are not readily subject to reasoned review. Since here there are neither allegations of fraud nor questions concerning definitive responsibility criteria which have not been applied, the matter is ineligible for our review.

For the foregoing reasons, the protest is denied.


Deputy Comptroller General
of the United States