



Comptroller General
of the United States
Washington, D.C. 20548

334125

Decision

Matter of: Hutchinson Contracting
File: B-251974
Date: May 18, 1993

Phillip E. Johnson for the protester.
Donald E. Barnhill, Esq., East & Barnhill, for J&J Maintenance, Inc., an interested party.
Gerald P. Kohns, Esq., Department of the Army, for the agency.
Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Bid that contained a Certificate of Procurement Integrity signed by an individual other than the signatory of the bid is responsive where the individual who signed the certificate was the president of the company, and was thus authorized to sign the certificate and bind the bidder.

DECISION

Hutchinson Contracting protests the award of a contract to J&J Maintenance, Inc. under invitation for bids (IFB) No. DABT47-93-B-0002, issued by the Department of the Army, Fort Jackson, South Carolina, for the upgrade of the heating, ventilation, and air conditioning (HVAC) systems at Ft. Jackson. Hutchinson asserts that J&J's bid was nonresponsive for failing to include a properly executed Certificate of Procurement Integrity.

We deny the protest.

The Army issued this IFB on November 16, 1992, to obtain a contractor to provide the labor, equipment, and materials necessary to renovate the HVAC system in certain designated buildings at Ft. Jackson. The IFB incorporated the required

"Certificate of Procurement Integrity" clause set forth at Federal Acquisition Regulation (FAR) § 52.203-8. The clause implements the Office of Federal Procurement Policy (OFPP) Act, 41 U.S.C. § 423(e) (1988 and Supp. III 1991), 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 the violations of the OFPP Act. See Holly's Inc., B-246444, Mar. 4, 1992, 92-1 CPD ¶ 261.

Bids were opened on December 29 and J&J was the apparent low bidder. J&J's bid was signed by an individual identified as the "Executive Vice President," while the Certificate of Procurement Integrity was signed by an individual identified as "President." The Army made award to J&J on January 4, 1993, as the low responsive, responsible bidder. On January 12, Hutchinson filed this protest, alleging that J&J's bid should have been rejected as nonresponsive because the bid and Certificate of Procurement Integrity were signed by different individuals.

Nothing in the OFPP Act or its implementing regulations prohibit different individuals from signing the bid and the certificate. See Sweepster Jenkins Equip. Co., Inc., B-250480, Feb. 8, 1993, 93-1 CPD ¶ 111. The signature of different individuals on the bid and certificate will not render a bid nonresponsive so long as the individual signing the bid was authorized to do so, and the individual signing the certificate was "responsible for the bid," as specified in the clause, and was authorized to bind the bidder to the terms of the certificate.¹ Id.; see, e.g., W.G. Yates & Sons Constr. Co., B-248719, Aug. 11, 1992, 92-2 CPD ¶ 97 (three individuals signed the bid on behalf of the joint venture bidder and one of those individuals executed the certificate).

The Army reports that, while it had no doubt as to the capacity of J&J's president to bind that company and be responsible for the bid, J&J, in response to the protest,

¹The individual executing the certificate must have the authority to bind the bidder because of the significant legal obligations contained in the certificate, and the penalties imposed upon the certifying individual for violating the certificate, as well as the administrative penalties that might be imposed on the contractor for its employee's violation. See Sweepster Jenkins Equip. Co., supra.

was requested to verify the authority of the president. As evidence of the president's authority to bind the company, J&J provided the Army a certified statement from the secretary of J&J, indicating that the president was elected on November 1, 1992, and that, in accordance with the articles of incorporation and by-laws, the president has the authority to enter into contracts and sign bidding documents on the corporation's behalf. Also, J&J confirmed that the president was the individual responsible for J&J's bid.

Given the evidence presented regarding the authority of J&J's president, the agency reasonably found that this individual was authorized to bind J&J to the legal obligations contained in the certificate at the time J&J submitted its bid and that he was responsible for the bid as specified in the certificate and OFPP Act. In this regard, the president was clearly identified in the certificate as holding that position, one that by its nature evidences that that individual has the authority to bind the bidder and be said to be responsible for the bid. Also, the appropriate corporate confirmation of the president's authority was promptly submitted in response to the protest.² While the protester still questions the veracity of the evidence showing that J&J's president had the requisite authority as of bid opening, it has produced no credible evidence to support its speculations.

The protest is denied.


for James F. Hinchman
General Counsel

²A bidder is not precluded from establishing after bid opening the authority of an individual to sign a certificate or bid. W.G. Yates & Sons Constr. Co., supra; Cambridge Marine Indus., Inc., 61 Comp. Gen. 187 (1981), 81-2 CPD ¶ 517; 49 Comp. Gen. 527 (1970).