

144-713
CORRECT



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: David Morales
File: B-243791.3
Date: August 27, 1991

David Morales for the protester.
Vicki E. O'Keefe, Esq., Department of the Navy, for the agency.
Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Bidder unequivocally committed itself to the requirements of the Certificate of Procurement Integrity by completing the certificate, which failed to contain a space for a signature, and signing the page in the margin adjacent to the certificate; the fact that the bidder's president signed the firm's bid using his full name, but signed the page containing the certificate with a shorter signature, is not objectionable where the record is clear that the same person signed both the bid and the certificate.

DECISION

David Morales protests the termination of his contract for the convenience of the government and the award of a contract to Xperts, Inc., under invitation for bids (IFB) No. N62470-91-C-5395, issued by the Department of the Navy for grounds maintenance services at the Roosevelt Roads Naval Station, Puerto Rico. Mr. Morales argues that Xperts failed to properly execute the Certificate of Procurement Integrity and therefore its bid was nonresponsive.

We deny the protest.

The IFB contained the Certificate of Procurement Integrity clause, as set forth in Federal Acquisition Regulation (FAR) § 52.203-8, and advised offerors that the "[f]ailure of a bidder to submit the signed certificate with its bid shall render the bid nonresponsive." The certificate only provided space for listing violations or possible violations of the

Office of Federal Procurement Policy (OFFPP) Act, 41 U.S.C. § 423 (Supp. I 1989), and did not provide a space for bidders' signatures or identify where bidders should sign the certificate.

The Navy received seven bids by the March 29, 1991, bid opening. The four lowest bids were received from J.D. Landscaping Corp. (\$1,770,062); H.P. Construction (\$2,089,839); Xperts (\$2,139,414); and David Morales (\$2,188,105). The contracting officer rejected the bids of J.D. Landscaping, H.P. Construction, and Xperts as nonresponsive because those bidders did not properly execute the Certificate of Procurement Integrity. On April 12, the Navy awarded the contract to Mr. Morales. Xperts protested the award to our Office on April 26.^{1/}

In response to Xperts's protest, the Navy determined that Xperts had properly executed the certificate and that its bid was responsive. The Navy terminated Mr. Morales's contract for the convenience of the government and awarded the contract to Xperts. Consequently, we dismissed Xperts's protest as academic.

Xperts's bid was signed by the company president, who, in addition to signing the bid, signed every page of the bid, including the page containing the Certificate of Procurement Integrity. The certification was also filled out to indicate that the certifier was unaware of any violations or possible violations of the OFFPP Act. Mr. Morales, nevertheless, protests that Xperts did not properly execute the certificate and that therefore the Navy's termination of his contract was improper. Specifically, Mr. Morales argues that Xperts did not demonstrate its specific intent to be bound by the Certificate of Procurement Integrity requirements by the signature on the Certificate of Procurement Integrity page; rather, the protester argues, the signature on each page merely was "an internal control action" designed "to prevent . . . somebody [from] remov[ing] or chang[ing] a bid document." Mr. Morales also complains that Xperts's president's "short signature" on each page of its bid is not the same as his full signature on the face of the bid.

The certification requirement, which imposes substantial legal obligations on the contractor, is a material solicitation term and, thus, a matter of responsiveness. See Mid-East Contractors, Inc., B-242435, Mar. 29, 1991, 70 Comp. Gen. _____, 91-1 CPD ¶ 342. Where, as here, a bid's responsiveness is

^{1/} On April 26, we dismissed J.D. Landscaping's protest that only objected to the agency's affirmative determination of Mr. Morales's responsibility.

challenged, we review the bid to determine whether the bid represents an unequivocal commitment to perform without exception the specifications called for in the IFB so that the bidder will be bound to perform in accordance with all the material terms and conditions. Contech Constr. Co., B-241185, Oct. 1, 1990, 90-2 CPD ¶ 264. As a result of the substantial legal obligations imposed by the certificate, and given the express requirement for the certificate to be separately signed, the omission from a bid of a signed and completed Certificate of Procurement Integrity leaves unresolved a bidder's legal commitment to comply with the certification requirements. Consolidated Metal Prods., Inc., B-244543, July 15, 1991, 91-2 CPD ¶ ____.

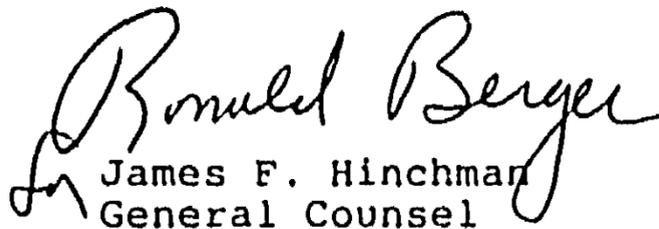
Here, we think Xperts unequivocally committed itself to the certification requirements by completing the certificate and separately signing the page that contained the certificate clause. Generally, a bidder may evidence its commitment to solicitation requirements in a manner other than that specified in the solicitation. See 51 Comp. Gen. 329 (1971); Bartley, Inc., 53 Comp. Gen. 451 (1974), 74-1 CPD ¶ 1. While a bidder must separately sign the Certificate of Procurement Integrity, apart from its signature on the bid, to demonstrate its commitment to the substantial legal obligations imposed by the certificate, see Ed A. Wilson, Inc., B-244634, July 12, 1991, 91-2 CPD ¶ ____, we see no reason why the signature manifesting that commitment must be within the four corners of the certification itself. In our view, Xperts's signature on the page containing the Certificate of Procurement Integrity evidenced its commitment to the certificate requirements.^{2/} That Xperts signed each page of its bid neither lessened nor negated this commitment; this only shows that the firm separately committed itself to the requirements contained on each page signed. Moreover, given the certificate's failure to provide a space for bidders' signatures or to instruct bidders where to sign, Xperts cannot be faulted for separately signing adjacent to the certificate.^{3/}

^{2/} The Certificate of Procurement Integrity is the only clause contained on the page.

^{3/} In Shifa Servs. Inc., B-242686, May 20, 1991, 70 Comp. Gen. ____, 91-1 CPD ¶ 483, we found that the failure of an IFB's Certificate of Procurement Integrity clause to provide a signature line or space for a signature, despite a parenthetical request for the "signature of the officer or employee responsible" for the certification, was a latent ambiguity that required cancellation of the IFB after bid opening. Here, Mr. Morales, who signed the certificate, is
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We also find without merit the protester's argument concerning Xperts's "short signature." It is true that the president's signature on the face of the bid is more elaborate than his signature on the other bid pages, including the page containing the certificate. The protester does not contend that the person signing Xperts's bid is not the same person signing each of the bid pages, including the Certificate of Procurement Integrity, or that there is any ambiguity concerning the identity of the person signing the bid and bid pages. Indeed, the record is clear that the same person signed the face of the bid and the other bid pages. See, e.g., Danish Arctic Contractors, B-225807, June 12, 1987, 87-1 CPD ¶ 590 (differences between a surety agent's signatures in a bid bond were not grounds for rejection of a bid, where the record established the identity of the surety agent). Under the circumstances, we fail to see how this "short signature" is any less valid than the longer signature on the face of the bid. See B-158607, Apr. 21, 1966 (a bidder's initials, along with his typewritten name, evidenced the bidder's commitment to the solicitation requirements); see also Uniform Commercial Code § 1-201(39) (Official Comment--a complete signature is not required to be legally binding).^{4/}

We deny the protest.


James F. Hinchman
General Counsel

3/ (...continued)

not prejudiced by the absence of a signature line in the certificate. In addition, neither of the two bidders that were lower priced than Xperts protested the agency's determination that they were nonresponsive or that they were misled by the absence of a signature line.

4/ The General Accounting Office will find the Uniform Commercial Code controlling to the maximum extent practicable where not inconsistent with federal interest, law, or court decision. See 51 Comp. Gen. 668, 670 (1970); 62 Comp. Gen. 121, 122 (1983).