



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Pacific Ventures Associates, Inc.

File: B-265878

Date: November 21, 1995

Michael H. Ferring, Esq., Jeffery, Ferring & Jenkel, for the protester.
Sherry Kinland Kaswell, Esq., Department of the Interior, for the agency.
Susan K. McAuliffe, Esq., and Michael R. Golden, Esq., Office of the General
Counsel, GAO, participated in the preparation of the decision.

DIGEST

Bid which did not include required power of attorney was properly rejected, despite the fact that omission was not discovered until approximately 2 weeks after bid opening, when bid first received a comprehensive review by agency prior to award. Bidder's assertion, supported by employees' affidavits, that power of attorney was included with its bid package prior to bid opening is insufficient to show that bid, as submitted, included the power of attorney.

DECISION

Pacific Ventures Associates, Inc. protests the rejection of its bid under invitation for bids (IFB) No. 1425-5-SI-10-06830, issued by the Department of the Interior, Bureau of Reclamation, for safety and fire protection enhancement of the Left Powerplant, Grand Coulee Power Office, Columbia Basin Project, Washington. The agency determined that the bid was nonresponsive because a comprehensive review of the bid almost 2 weeks after bid opening revealed that the required bid bond was not accompanied by a power of attorney evidencing the authority of the attorney-in-fact to sign the bond on the surety's behalf.

We deny the protest.

The solicitation, issued on January 27, 1995, required bidders to submit, along with their bids, a bid bond for 20 percent of the bid price. Pacific Ventures was the apparent low bidder at bid opening on June 29. Approximately 2 weeks after bid opening, the contract specialist conducted a comprehensive review of the bid for completeness prior to award and noticed that the protester's bid did not include the required power of attorney. After the agency's legal review of the omission issue, on July 18, Pacific Ventures was notified that the agency rejected its bid as nonresponsive. On July 24, Pacific Ventures filed an agency-level protest of that

determination, stating that the power of attorney was included with its bid package submitted prior to bid opening; the agency denied that protest by letter of August 23. This protest followed.

Pacific Ventures states that the power of attorney was included with its bid and, in support of that claim, provides affidavits from two of its employees responsible for the firm's bid submission stating that the requisite document was submitted with the bid. The protester also provides a statement from the attorney-in-fact for the surety listed on the protester's bid bond, asserting that the power of attorney was provided to the protester as an attachment to the bid bond executed by him for the protester in connection with the IFB. (The attorney-in-fact does not state that he has personal knowledge that the power of attorney was submitted with the firm's bid.) Pacific Ventures also states that it communicated with the agency about the project (e.g., regarding small business status and funding) during the 2 weeks after bid opening, and that the fact that the omission of the power of attorney was not raised during that time period shows that the power of attorney was properly submitted but must have been lost by the agency after bid opening.

The agency responds that at bid opening, bids were marked with an adhesive tab on the bid form (Standard Form (SF) 1442), the bid bond (SF 24), and the last page of the bid schedule (for ease in locating the information for each bid to be announced at bid opening); the bids, however, were not thoroughly reviewed at that time for completeness. Each bid submission was clipped (then stapled) together, including the bid package's envelope, and placed in a file which remained in the contract specialist's office. The contract specialist states that her comprehensive review of the protester's bid in anticipation of award was conducted approximately 2 weeks after bid opening—during that review, the contract specialist discovered that there was no power of attorney included with Pacific Ventures's bid, but there were two original bid bonds (SF 24).

The determinative issue concerning the acceptability of a bid bond is whether, in the event of a default by the bidder, the contracting agency could be certain that the surety would be bound, based on the information in possession of the contracting agency at the time of bid opening. Executone Info. Sys., Inc., B-246155, Oct. 21, 1991, 91-2 CPD ¶ 353. If the agency cannot determine definitely from the documents submitted with the bid that the surety would be bound, such as where the bid package omits a required power of attorney, the bid is nonresponsive and must be rejected. Global Eng'g, B-250558, Jan. 11, 1993, 93-1 CPD ¶ 31. In these circumstances, the bond deficiency may not be cured by submitting the original bond documents (including the power of attorney) after bid opening because this would essentially provide the bidder with the option of accepting or rejecting the award by either correcting or not correcting the bond deficiency, which is inconsistent with the sealed bidding system. Id.

The protester has submitted insufficient evidence to show that the required power of attorney was in fact submitted with its bid and that the agency lost the power of attorney after bid opening. The evidence furnished by the protester consists of statements of its own employees--that the power of attorney was properly submitted--and a statement of the surety's attorney-in-fact--that only suggests that the power of attorney was furnished to the bidder, but does not provide independent evidence that the power of attorney was submitted with the firm's bid. The statements by the employees of the firm, without independent corroborating evidence, do not establish that the power of attorney was submitted with the firm's bid. See Secur-Data Sys., Inc., B-255090, Feb. 2, 1994, 94-1 CPD ¶ 68; Zolman Constr. & Dev., Inc., B-247117, Mar. 13, 1992, 92-1 CPD ¶ 284.

The agency has explained in detail its procedures concerning the limited review of the bids at bid opening and the careful handling of the bid documents (including clipping and then stapling the documents for filing until a more comprehensive review of the bids was to be conducted) which, in light of the protester's lack of independent corroborating evidence, renders unpersuasive the protester's contention that the power of attorney was received and subsequently lost. The fact that the contract specialist first mentioned the omission of the power of attorney approximately 2 weeks after bid opening is not persuasive evidence, as the protester contends, that the agency must have lost the power of attorney after bid opening. Rather, the record adequately shows that this delay in bringing the deficiency to Pacific's attention was due to the fact that the bid was examined in a comprehensive manner for the first time 2 weeks after bid opening. The agency's rejection of the bid therefore was proper.

The protest is denied.

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