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

Decision

Matter of: Firebird Construction Corp.
File: B-246182
Date: February 21, 1992

William Skolnik for the protester.
Sherry Kinland Kaswell, Esq., and Justin P. Patterson, Esq.,
Department of the Interior, for the agency.
Jacqueline Maeder, Esq., and Paul Lieberman, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Bidder's failure to enter company name in second paragraph of Certificate of Procurement Integrity form does not render its bid nonresponsive where the certifier's typed name and signature were properly inserted on the certificate; the certification is clearly applicable to the bidder since the completed certificate was submitted with the bid which was signed by the company president, the same individual who signed the certificate.

DECISION

Firebird Construction Corp. protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. GATE-185A, issued by the National Park Service, Department of the Interior, for the rehabilitation of roads and parking areas at Gateway National Recreation Area, New York. Firebird's low bid was rejected as nonresponsive for failure to properly execute the Certificate of Procurement Integrity, and award was made to I.P.I. Industries, Inc., the next low bidder.

We sustain the protest.

BACKGROUND

The IFB was issued on August 7, 1991. Because the contract award was expected to exceed \$100,000, the agency included the Certificate of Procurement Integrity in the IFB as

required by Federal Acquisition Regulation (FAR) § 3.104-10(a). The Certificate of Procurement Integrity requirement, set forth at FAR § 52.203-8, implements the Office of Federal Procurement Policy (OFPP) Act, 41 U.S.C.A. § 423 (West Supp. 1991), a statute which bars agencies from awarding contracts unless a bidder or offeror certifies in writing that neither it nor its employees have any information concerning violations or possible violations of the OFPP Act.¹ Shifa Servs., Inc., 70 Comp. Gen. 502 (1991), 91-1 CPD ¶ 483. The activities prohibited by the OFPP Act involve soliciting or discussing post-government employment, offering or accepting a gratuity, and soliciting or disclosing proprietary or source selection information. Id.

The certification requirements obligate a named individual--the officer or employee of the contractor responsible for the bid or offer--to become familiar with the prohibitions of the OFPP Act, and impose on the bidder, and its representative, a requirement to make full disclosure of any possible violations of the OFPP Act, and to certify to the veracity of the disclosure. 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 bids or offers; as a result of the substantial legal obligations imposed on a contractor by the certificate, we have held that the Certificate of Procurement Integrity constitutes a material term of the solicitation, and compliance with the certification requirements is therefore a matter of responsiveness. Id.

In this case, the agency used the certification clause provided at FAR § 52.203-8 as the IFB's Certificate of Procurement Integrity. Accordingly, bidders were required to complete and submit the following form:

"CERTIFICATE OF PROCUREMENT INTEGRITY

"(1) I, _____ (name of certifier), am the officer or employee responsible for the preparation of this offer . . . hereby certify that . . . I have no information concerning a violation or possible violation of . . . the [OFPP] Act . . . occurring during the conduct of this procurement IFB GATE-185A (solicitation number).

¹The OFPP Act's provisions requiring this certification became effective, for the second time, on December 1, 1990.

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"(2) . . . I further certify that, to the best of my knowledge and belief, each officer, employee, agent, representative, and consultant of _____ (Name of Offeror) . . . is familiar with, and will comply with, the requirements . . . of the Act

"(3) Violations or possible violations:
. . . ENTER "NONE" IF NONE EXIST _____.

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"[Signature of the officer or employee responsible for the offer and date]

[Typed name of the officer or employee responsible for the offer]."

Firebird's bid was signed by William Skolnik in his capacity as the company president, and Skolnik also signed as the certifier on the certificate. Firebird entered Skolnik's name in the "[n]ame of certifier" blank at paragraph 1 and entered "NONE" at paragraph 3 to indicate that the certifier was unaware of any violation or possible violation of the OFPP Act. Skolnik signed and dated the certificate on the appropriate lines beneath paragraph 4 of the form. Because Firebird neglected to fill in the "Name of Offeror" blank at paragraph 2, the agency found Firebird's bid nonresponsive.²

DISCUSSION

The question here is whether Firebird certified in writing regarding violations or possible violations of the OFPP Act and its continued compliance with the Act as required by 41 U.S.C.A. § 423 and FAR § 52.203-8. We find that even though the bidder's name was not recorded in paragraph 2 of the clause, Firebird's bid contained the required certification.

The bidder's president certified that the firm's employees, agents and representatives are familiar with and will comply with the OFPP Act. The certifier neglected only to insert the name of the offeror/employer. However, since the certification is signed by the same individual who signed the bid for Firebird, and the certification was submitted with Firebird's bid, this is sufficient to identify Firebird as the offeror on this certification. Indeed, the only

²The solicitation number had been completed by the agency in all of the certifications.

reasonable interpretation of the documents is that the president of the company was certifying that Firebird and its employees would comply with the requirements of the OFPP Act. We thus conclude that Firebird's failure to insert its company name on its signed certificate does not render its bid nonresponsive and this omission is properly waivable as a minor informality. See Woodington Corp., B-244579.2, Oct. 29, 1991, 91-2 CPD ¶ 393; C.B.C. Enter., Inc., B-246235, Oct. 31, 1991, 91-2 CPD ¶ 416.

Suspension of contract performance was not required in this case under the Competition in Contracting Act because the protest was filed in our Office more than 10 days after the award was made. Since the contract has been substantially performed, termination is not a feasible remedy. However, because the agency's improper actions deprived the protester of a fair opportunity to compete for the award, Firebird is entitled to recover its bid preparation costs. 4 C.F.R. § 21.6(d)(2) (1991). Firebird is also entitled to the costs of filing and pursuing its protest. 4 C.F.R. § 21.6(d).

The protest is sustained.

for 
Comptroller General
of the United States