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

Decision

Matter of: G. Penza & Sons, Inc.

File: B-249321

Date: September 2, 1992

Howard A. Pollack, Esq., Braude & Margulies, P.C., for the protester.
Bernard R. Fortunato for Fortunato Sons, Inc., an interested party.
Lester M. Hunkele, III, Department of Veterans Affairs, for the agency.
Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Bid was properly rejected as nonresponsive where the Certificate of Procurement Integrity contained the hand-printed name and title of the officer responsible for the bid but not the officer's signature, thus failing to unequivocally commit the bidder to the certificate's terms.

DECISION

G. Penza & Sons, Inc. protests the rejection of its bid under invitation for bids (IFB) No. 9207-AE, issued by the Department of Veterans Affairs (VA) for the development of 90,000 grave sites in the Calverton National Cemetery in New York. VA rejected Penza's bid as nonresponsive because Penza's representative failed to properly execute the required Certificate of Procurement Integrity. Penza argues that its bid was improperly rejected because its representative otherwise manifested an intent to be bound by the certificate's terms.

We deny the protest.

The IFB contained the Certificate of Procurement Integrity clause set forth at Federal Acquisition Regulation (FAR) § 52.203-8.¹ The certification contained a designated

¹The certification implements several provisions of the Office of Federal Procurement Policy (OFPP) Act, 41 U.S.C. § 423 (1988 and Supp. II 1990). The OFPP Act prohibits
(continued...)

signature line where bidders were instructed to place the "[s]ignature of the officer or employee responsible for the [bid] and date." Immediately below that instruction, bidders were told to "[t]ype [the] name of the officer or employee responsible for the offer." The IFB advised that failure of a bidder to submit the signed certificate with its bid would render the bid nonresponsive. In addition, at the beginning of the "Representations and Certifications" section, the IFB advised bidders to "be especially careful to fully and accurately complete Article 1.3, requirement for Certificate of Procurement Integrity and submit this with [their] bid[s] or offer[s]."

Fifteen bidders responded to the IFB by the February 18, 1992, bid opening date. VA rejected Penza's low bid as nonresponsive for failure of Penza's representative to submit a signed Certificate of Procurement Integrity with the bid. VA subsequently awarded the contract to Fortunato Sons, Inc., the second-low bidder. Penza protested the rejection of its bid to VA, which denied the protest. This protest to our Office followed.²

Penza's Certificate of Procurement Integrity contained the following information: (1) the hand-printed name of the officer responsible for preparing the bid ("GEORGE PENZA"); (2) the solicitation number; (3) the hand-printed name of the bidder ("G. PENZA & SONS, INC."); (4) the word "NONE" where the certification calls for identification of any known violations or possible violations of the OFPP Act; and (5) the hand-printed name of the officer responsible for the bid and his title ("GEORGE PENZA, PRESIDENT"). Mr. Penza did not sign the certificate.

The certification requirement, which imposes substantial legal obligations on the contractor, is a material solicitation term, and thus, a matter of responsiveness. Mid-East Contractors, Inc., 70 Comp. Gen. 383 (1991), 91-1 CPD ¶ 342. Where, as here, a bid's responsiveness is challenged, we review the bid to determine whether it represents an

¹(...continued)

activities involving soliciting or discussing post-government employment, offering or accepting a gratuity, and soliciting or disclosing proprietary or source selection information. The certificate obligates a named individual to comply with the provisions of the Act, to certify the veracity of disclosures required by the Act, and to collect similar certificates from all other individuals involved in the preparation of bids or offers.

²The agency has suspended performance of the contract pending resolution of this protest.

unequivocal commitment to perform without exception the requirements stated 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 ¶ 58. Here, although Penza's certificate identified the individual it considers responsible for the additional requirements imposed by the terms of the certificate, that individual did not sign the certificate and thus did not establish his intent to be bound to the terms of the certificate. VA thus properly rejected the protester's bid as nonresponsive. See Kurtz Constr. Co., B-245914, Oct. 29, 1991, 91-2 CPD ¶ 401.

The protester relies on our decisions in Firebird Constr. Corp., 71 Comp. Gen. 268 (1992), 92-1 CPD ¶ 211, and David Morales, B-243791.3, Aug. 27, 1991, 91-2 CPD ¶ 202, to argue that since Mr. Penza submitted a signed Certificate of Independent Price Determination with the bid, VA improperly rejected the bid as nonresponsive. According to the protester, Mr. Penza's signature on that certificate should be viewed as binding Mr. Penza and his company to comply with the requirements of the Certificate of Procurement Integrity because both certificates were part of the same "package" of representations and certifications required by the IFB.

In Morales, where the certificate failed to include a designated signature line, and bidders had no choice but to improvise, we found sufficient the signature of a bidder's representative in the margin of the page containing the certificate. The holding in Morales goes no further. In Firebird, we found that the bidder's failure to insert its company name on the signed Certificate of Procurement Integrity was properly waivable as a minor informality and did not render its bid nonresponsive. Firebird is inapplicable here since the certification was signed by the president of the company submitting the bid and there was no question that the individual bound himself and the bidder to comply with the terms and obligations imposed by the certificate.

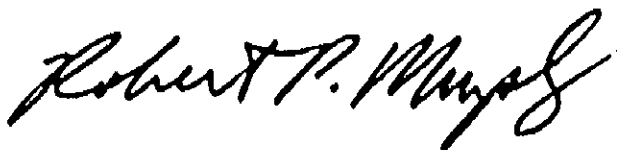
Where, as here, a signature line is included in the certificate, the contracting agency may reasonably conclude that by failing to sign in the designated location, the bidder's representative has failed to manifest an unequivocal intent to be bound by the certificate's material requirements and

may properly reject the bid, Koehler GmbH, B-246012, Feb. 12, 1992, 92-1 CPD ¶ 180. Contrary to the protester's assertions, it is not reasonable to conclude that Mr. Penza's signature on the Certificate of Independent Price Determination included in the same "package" of representations and certifications in the IFB was intended as a signature binding the protester to its obligations under the Certificate of Procurement Integrity; even though they are included in the same section in the IFB, the two certificates are entirely separate and relate to completely different requirements.

The protester also points to a Uniform Commercial Code (UCC) provision, and to the definition of "signed" under Maryland state law, to argue that Mr. Penza's hand-printed name on the Certificate of Procurement Integrity suffices to bind Mr. Penza and his company to the certification's requirement. We see no basis to conclude that the hand-printed name inserted in the Certificate of Procurement Integrity was intended as a substitute for the required signature. In comparison, the Certificate of Independent Price Determination had both the hand-printed name and Mr. Penza's signature; thus, it is reasonable to assume by reference to that certificate that Mr. Penza distinguished between his hand-printed name and his signature, and when a signature was intended, Mr. Penza actually signed the bid. In addition, the Certificate of Procurement Integrity specifically called for both a signature and a typed name; it is reasonable to assume that Mr. Penza's hand-printed entry was intended as a substitute for the typewritten name rather than for the required signature. There is no other indication that Mr. Penza had adopted the hand-printed form of his name as his signature.

Penza also argues that the cost savings to the government from acceptance of its bid supports a waiver of the signature requirement. Although acceptance of Penza's bid may result in a monetary savings to the government on this procurement, maintaining the integrity of the competitive bidding system is paramount to any pecuniary advantages to be gained in a particular case. See Kurtz Constr. Co., supra.

The protest is denied.



for James F. Hinchman
General Counsel