



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

1047117

Decision

Matter of: North Central Construction, Inc.

File: B-256839

Date: July 5, 1994

Jon E. Cushman, Esq., Cushman & Miller, for the protester.
Robert P. Majerus, Esq., Stanislaw, Ashbaugh, Riper,
Peters & Beal, for Trico Contracting, Inc., an interested
party.

Sherry Kinland Kaswell, Esq., and Alton E. Woods, Esq.,
Department of the Interior, for the agency.

Daniel I. Gordon, Esq., and Paul Lieberman, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Bid was properly rejected as nonresponsive where its certificate of procurement integrity identified one person as the certifier but was signed by a different person; the improperly executed certificate failed to unequivocally bind the bidder to perform in accordance with the substantial legal obligations imposed by the certificate.

DECISION

North Central Construction, Inc. protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. 1425-4-SI-10-06490, issued by the Department of the Interior, Bureau of Reclamation, for construction related to the Columbia River pumping plant on Lake Wallula, near Hermiston, Oregon. North Central contends that the agency improperly found its procurement integrity certification to be deficient.

We deny the protest.

The agency issued the IFB on December 20, 1993. The IFB contained the full text of the Certificate of Procurement Integrity clause, Federal Acquisition Regulation § 52.203-8. At bid opening on February 8, 1994, North Central's bid was apparently low. Upon review of the bid, however, the agency found a defect in North Central's execution of the solicitation's certificate of procurement integrity. Specifically, at the top of the certificate, North Central

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had typed the name of one person as the "certifier," but a different person had signed the certificate. Finding the certification defective, the agency rejected North Central's bid as nonresponsive.

The protester contends that its low bid should have been accepted, because the use of two names, although an error, was immaterial, since both persons have authority to bind the company. North Central also claims that the IFB was confusing in this regard because the signature block (where the second individual's name appeared) was on a separate page from the body of the certificate (where the first name appeared).

When the responsiveness of a bid is challenged, we review the bid to determine whether it represents an unequivocal commitment to perform 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. The certification requirement of the Office of Federal Procurement Policy (OFPP) Act, 41 U.S.C. § 423(e) (1988 & Supp. IV 1992), implemented in the Certificate of Procurement Integrity clause, imposes substantial legal obligations and is thus a material solicitation term which constitutes a matter of responsiveness. See Mid-East Contractors, Inc., 70 Comp. Gen. 383 (1991), 91-1 CPD ¶ 342. Accordingly, a bid with an improperly executed certificate of procurement integrity is nonresponsive. Bootz Distribution, B-251155, Feb. 10, 1993, 93-1 CPD ¶ 123.

Where, despite an error in the execution of the certificate, there is no ambiguity or confusion about the identity and authority of the one individual certifying, the bid may nonetheless be responsive. Thus, in Woodington Corp., B-244579.2, Oct. 29, 1991, 91-2 CPD ¶ 393, our Office found a bid responsive, notwithstanding the bidder's failure to fill in the name of the certifier at the top of the form, because the typed name and signature appeared at the end of the certification and no other name was present which could raise doubt about the identity of the certifying individual. Similarly, the failure to date a certificate of procurement integrity is waivable as a minor informality where the certification's applicability to a particular bid is clear. See C.B.C. Enters., Inc., B-246235, Oct. 31, 1991, 91-2 CPD ¶ 416.

However, where the error creates doubt about whether one individual representative of the bidder has made an unequivocal commitment to satisfy all the solicitation requirements, the bid is nonresponsive. The absence of a signature on the certificate thus makes the bid nonresponsive. See, e.g., G. Penza & Sons, Inc., B-249321,

Sept. 2, 1992, 92-2 CPD ¶ 147. Here, North Central identified one person as the certifier, but a different person signed the certification. Thus, unlike in Woodington Corp., supra, it is not clear who the certifying individual is. Since the identity of the certifier must be clear if the certificate itself is to have validity, the agency properly concluded that North Central's certificate was fatally defective.¹

The protest is denied.

/s/ Ronald Berger
for Robert P. Murphy
Acting General Counsel

¹North Central argues that the IFB's having the signature line on a page separate from the body of the certification was confusing and misled the company into thinking that the signature was "unassociated" with the certificate of procurement integrity. While we see no basis to find that the IFB was confusing in this regard, North Central's argument effectively calls into question whether the person who signed the certificate understood that his signature related back to the OFPP Act requirements set forth on the previous page and represented a commitment to fulfill those requirements. North Central's argument thus demonstrates the reasonableness of the agency's position that having a different person identified as the certifier and the signer does not represent an unequivocal commitment to satisfy the certification requirements.