



## Decision

**Matter of:** Daniels Building Company, Inc.

**File:** B-421680

**Date:** July 24, 2023

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Marcus R. Sanborn, Esq., Blevins Sanborn Jezdimir Zack PLC, for the protester. Samuel S. Finnerty, Esq., Peter B. Ford, Esq., and Daniel J. Figuenick, Esq., Piliero Mazza PLLC, for CAVU-Roncelli Construction JV-10 LLC, the intervenor. Deborah K. Morrell, Esq., Department of Veterans Affairs, for the agency. Anh-Thi H. Le, and Evan D. Wesser, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest alleging that the awardee's bid should have been rejected as nonresponsive because it failed to include a valid signature on a material certification is denied where the record shows that the agency reasonably concluded that the certification was signed and the signature was both discrete and verifiable.

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### DECISION

Daniels Building Company, Inc. ("Daniels"), a small business of Farmington Hills, Michigan, protests the award of a contract to CAVU-Roncelli Construction JV-10 LLC ("CAVU-Roncelli"), a small business of Bloomfield Hills, Michigan, by the Department of Veteran Affairs (VA), under invitation for bids (IFB) No. 36C25023B0003 for the addition of emergency power to the Ann Arbor Michigan VA Medical Center (VAMC) central chiller plant. The protester alleges that the awardee's bid should have been rejected for failing to comply with the solicitation's requirement to provide a signed limitation on subcontracting certificate.

We deny the protest.

### BACKGROUND

On January 5, 2023, the agency issued the IFB as a set-aside for service-disabled veteran-owned small businesses for the addition of emergency power to the Ann Arbor Michigan VAMC central chiller plant. See Contracting Officer's (CO) Statement of Facts (COS) (June 5, 2023) at 2; IFB at 6. The IFB contemplated the award of a fixed-price

contract. IFB at 13. Relevant here, the IFB required all bidders to include an executed “VA Notice of Limitations on Subcontracting--Certificate of Compliance for Services and Construction” (“LOS Certification”) as required by VA Acquisition Regulation (VAAR) Clause 852.219-77, and informed bidders that the failure to include a completed LOS Certification with the bid would result in rejection of the bid as nonresponsive. IFB at 53-55.

The agency received four bids in response to the IFB by the bid opening scheduled for February 14, 2023. COS at 2. While a VA procurement technician was physically present at the opening, the contracting officer attended virtually via video call. Memorandum of Law (MOL) at 2. After the bids were opened, the contracting officer rejected the bid from the apparent low bidder for failing to include the required LOS Certification. *Id.* CAVU-Roncelli was the second-lowest bidder, with a total bid of \$5.675 million, and Daniels was the third-lowest bidder, with a total bid of \$6.23 million. *Id.*

While CAVU-Roncelli’s bid included the LOS Certification, the contracting officer could not see a signature when viewing the bid through the video call. *Id.* Rather than rejecting the bid at that time, the contracting officer asked the procurement technician to scan and email him a copy of CAVU-Roncelli’s bid. *Id.* Upon reviewing the scanned copy of the LOS Certification, the contracting officer observed a faint mark on the signature line, but concluded that the mark was not decipherable and could not be concluded to be a valid signature. Agency Report (AR) Tab 9, Rescission of Rejection of Bid. The CO did not announce an apparent awardee during the bid opening. MOL at 2.

Following the bid opening, the VA procurement technician mailed the original copy of CAVU-Roncelli’s bid to the contracting officer’s office. COS at 2. Notwithstanding that the original bid had been received, the contracting officer, based solely on his review of only the scanned copy of the LOS Certification, rejected CAVU-Roncelli’s bid for failing to include a valid signature on the LOS Certification. AR, Tab 9, Rescission of Rejection of Bid. The contracting officer subsequently reconsidered his decision to reject the bid, concluding that it was necessary to review the signature on the original bid document. Upon doing so, the contracting officer realized that the video call and the scan did not capture the original signature on the LOS Certification due to the light blue color of the ink. *Id.*; COS at 3. The contracting officer compared the signature on the original LOS Certification to another signature in the bid and determined that both were signed by the same individual; based on this determination, the contracting officer rescinded the rejection of CAVU-Roncelli’s bid. AR, Tab 9, Rescission of Rejection of Bid; see also AR, Tab 5.c. CAVU Roncelli Constr. JV-10 LLC Offer at 1 (reflecting execution by representative of managing joint venturer) and Tab 5.e, CAVU Roncelli Constr. JV-10 LLC LOS Certification (reflecting signature block information for same representative). The agency subsequently awarded the contract to CAVU-Roncelli, and this protest followed.

## DISCUSSION

The protester alleges that the VA should have rejected the awardee's bid as nonresponsive for its failure to properly execute the LOS Certification. Protest at 2. For the reasons that follow, we deny the protest.

The VAAR LOS Certification clause contained in the IFB implements the Small Business Act, 38 U.S.C. § 8127(l)(2). See IFB at 53-55. The clause advised bidders that "[t]he Government will not consider offers for award from offerors that do not provide the certification, and all such responses will be deemed ineligible for evaluation and award." *Id.* at 55. The certification requirement, which imposes substantial legal obligations on the contractor, is a material solicitation term and, thus, implicates a matter of the bid's responsiveness. Where a bid's responsiveness is 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 at 2. Because of the substantial legal obligations imposed by the certification and the express requirement for it to be separately signed, the failure to properly execute the LOS Certification renders a bid nonresponsive. IFB at 53-55; *cf. Consolidated Metal Prods., Inc.*, B-244543, July 15, 1991, 91-2 CPD ¶ 58 at 2 (finding a bid with an improperly executed certificate of procurement integrity was nonresponsive); *Ed A. Wilson, Inc.*, B-244634, July 12, 1991, 91-2 CPD ¶ 53 at 2 (same).

While the protester contends that the awardee's LOS Certification was unsigned and therefore the bid should have been rejected as nonresponsive, the record does not support this contention. In this regard, the scanned version of CAVU-Roncelli's LOS Certification produced in the agency report displays a faint, but visible handwritten marking on the signature line. AR, Tab 5.e., LOS Certification Signature Page. The contracting officer represents that he further examined the original copy of the bid and determined that there was a signature on CAVU-Roncelli's LOS Certification that was sufficiently distinguishable to be authenticated. COS at 3. On this record, we find no merit to the protester's contention that the LOS Certificate was unsigned.

Daniels argues in the alternative that even assuming the LOS Certification was signed, the signature was nevertheless insufficient because it could not be verified in terms of identifying the signor. We similarly find no basis to sustain the protest on this argument.

Our Office has recognized that the sufficiency of the evidence required to show the authority of an individual signing a bid is largely a factual question to be resolved by the contracting agency after consideration of all the materials presented. *Draughon LLC*, B-413008.2, Sept. 30, 2016, 2016 CPD ¶ 282 at 5; *Alpha Q, Inc.*, B-234403.2, Oct. 31, 1989, 89-2 CPD ¶ 401 at 2-3. Although the signature that appears on the scanned copy of the LOS Certification is certainly not a "model of clarity," we see no basis to question the agency's determination of its validity. See *Tri-Ark Indus., Inc.*, B-270756, April 18, 1996, 96-1 CPD ¶ 194 at 2 (denying protest challenging the validity of a signature

included on a procurement integrity certificate submitted with a bid where the bidder failed to include the name of signor in the first paragraph of the certificate, but included the printed name with the signature in the last paragraph).

The Federal Acquisition Regulations (FAR) defines “signature” or “signed” as “the discrete, verifiable symbol of an individual that, when affixed to a writing with the knowledge and consent of the individual, indicates a present intention to authenticate the writing.” FAR § 2.101. Consistent with the FAR’s requirements, our prior decisions indicate that, even when the appearance of the mark is ambiguous, a handwritten mark that purports to act as a signature can qualify as a valid signature if it can appropriately be traced to the individual making it.<sup>1</sup> See *Micon Corp.*, B-249231, Oct. 28, 1992, 92-2 CPD ¶ 293 at 2 (finding no ambiguity with respect to the individual responsible for an allegedly illegible signature and accompanying initials when the signor’s name and title were typed below the signature line). In contrast, when the substance of the mark on a document fails to connect a purported signature back to its signor, we determine that the mark does not sufficiently indicate the intent of the signor to be bound by its terms. See *Minority Enters. Inc.*, B-216667, Jan. 18, 1985, 85-1 CPD ¶ 57 at 3 (finding that bid bond did not sufficiently identify and indicate the intent of the surety to be bound by its terms when the signature was illegible and the spaces provided for name and address, state of incorporation, liability limit, and typed name and title of the person signing were all left blank).

Here, although the copy of the marking on the LOS Certification is faint, the image is clear enough to determine that there is a handwritten marking that appears squarely on the signature line, which falls directly below the printed name and title of the signor, a representative of the managing joint venture member. AR, Tab 5.e., LOS Certification Signature Page. Upon examining the original document, the contracting officer observed that the LOS Certification contained a discernable handwritten signature in light blue ink; the contracting officer then compared it to another handwritten signature in the bid to confirm that both were signed by the same person. COS at 3; see *also* AR, Tab 5.c. CAVU Roncelli Constr. JV-10 LLC Offer at 1 (reflecting execution by the same representative of the managing joint venturer). The signature here is “discrete” because it is an original handwritten mark that appears separately on the signature line, and “verifiable” because it was accompanied by the signor’s printed name and permitted a comparison to his other signature in the bid. Thus, there is a valid signature that binds the bidder to the terms of the LOS Certification. On this record, we see no reason to question the reasonableness of the contracting officer’s determination that the awardee submitted a compliant, executed LOS Certification.

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<sup>1</sup> In this respect, our decisions are consistent with persuasive authority of the Armed Services Board of Contract Appeals interpreting the FAR’s definitional components of a signature as “discrete” when it is separate and distinct, and “verifiable” when it can be tied to an individual. See, e.g., *Kamaludin Slyman Constr. & Supply Co.*, ASBCA No. 62006, 20-1 B.C.A. ¶ 37,694 (2020).

To the extent that the protester expresses concerns over the slight differences between the signor's signature on the LOS Certification and his signature appearing on the bid offer, we find no grounds to sustain the protest on this basis. We have previously found that slight differences in an individual's signature are immaterial when there is no ambiguity concerning the identity of the person signing the bid and bid pages. See e.g., *David Morales*, B-243791.3, Aug. 27, 1991, 91-2 CPD ¶ 202 at 4 (a bidder's use of a long signature in its bid but short signature in its certificate is not objectionable where the record is clear that the same person signed both the bid and the certificate); *Danish Arctic Contractors*, B-225807, June 12, 1987, 87-1 CPD ¶ 590 at 3-4 (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). Here, there is no ambiguity concerning the identity of the person responsible for the signature on the LOS Certification. In this regard, the LOS Certification's signature block included clearly printed information identifying the signor and the contracting officer has determined that the same individual signed the bid offer and the LOS Certification.

The agency has verified that the signature on the LOS Certification is in fact the signature of the individual whose printed name appears on the certificate. COS at 3. We see nothing improper in the agency's acceptance of the LOS Certification as submitted with the bid. The fact that the original signature appeared faint in a scanned copy does not mean that the bidder is any less committed to the provisions of the solicitation. Therefore, we find no basis to object to the agency's determination that the successful bidder did submit a responsive bid.

The protest is denied.

Edda Emmanuelli Perez  
General Counsel