



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: R.F. Lusa & Sons Sheetmetal, Inc.

File: B-281180.2

Date: December 29, 1998

Leonard W. Childs, Jr., Esq., Childs & Lewis for the protester.
Capt. Steven H. Levin, Department of the Army, for the agency.
Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Unsigned or uninitialed inscription on the outside envelope of the protester's bid purportedly modifying the bid price reflected on the protester's bid form is not an effective bid modification where the bid or modification is not otherwise accompanied by evidence of the bidder's intent to be bound by the modification.

DECISION

R.F. Lusa & Sons Sheetmetal, Inc. protests the award of a contract to Brazos Roofing International of South Dakota, Inc. under invitation for bids (IFB) No. DAKF10-98-B-0066, issued by the Department of the Army for roofing repair work at Fort Stewart and Hunter Army Airfield, Georgia. Lusa contends that the Army improperly failed to consider a modification to its bid price written on the envelope containing its bid, where that modification would have made it the low bidder.

We deny the protest.

The Army received three bids by bid opening. On the envelope containing Lusa's bid was the inscription "ENVELOPE DEDUCTION 10% off all Bid items." This inscription was not signed or initialed. Without considering the envelope deduction, Lusa's bid was second low and Brazos's bid was low. If the deduction is applied to the bid price on the standard form (SF) 1442 on which Lusa submitted its bid, Lusa's bid would be the lowest.

The Army determined that it could not consider the envelope inscription as an effective modification to Lusa's bid because it lacked a signature and was not in the proper form. Therefore, the Army made award to Brazos.

Lusa contends that the Army should have modified its bid in accordance with the modification on the envelope containing its bid. Lusa asserts that the modification

met the requirements of Federal Acquisition Regulation (FAR) § 14.303(a), since it was in writing, submitted by a properly authorized agent of Lusa, and received in the designated office by the proper time. Lusa argues that the solicitation did not prohibit this method of modifying a bid, and that this method has been employed by Lusa on other procurements.

FAR § 14.303 provides in pertinent part that "[b]ids may be modified or withdrawn by any method authorized by the solicitation, if notice is received in the office designated in the solicitation not later than the exact time set for opening of bids." Here, the IFB did not authorize unsigned or uninitialed bid modifications on bid envelopes. To the contrary, the IFB incorporated FAR § 52.214-5, Submission of Bids, which required bid modifications to be submitted in sealed envelopes or packages, and FAR § 52.214-18, Preparation of Bids--Construction, which requires that bids be manually signed and that the person signing a bid must initial each erasure or change appearing on any bid form.

Such unsigned or uninitialed bid modifications on the outside of bid envelopes may not be accepted unless the bid or modification is otherwise accompanied by evidence of the bidder's intent to be bound by the modifications. Barnes Elec. Co., Inc., B-228651, Oct. 2, 1987, 87-2 CPD ¶ 331 at 2-3; Government Contract Servs., Inc., B-226885, Aug. 27, 1987, 87-2 CPD ¶ 204 at 2; cf. Qualicon Corp., B-237288, Feb. 7, 1990, 90-1 CPD ¶ 158 at 2-4 (bid modification written on outside bid envelope was acceptable where initialed by the signatory to the bid). Just as in the case of a bid, a bid modification subject to the requirement that it be signed by the bidder or its properly authorized agent, or otherwise reflect clear evidence of the bidder's intent to be bound if a signature is lacking; otherwise the bidder may not be legally obligated to comply with the terms of the bid as modified, even if the government accepted the bid. See Tilley Constructors & Eng'rs, Inc., B-251335.2, Apr. 2, 1993, 93-1 CPD ¶ 289 at 3; FCC Constr., Inc., B-250304, Jan. 11, 1993, 93-1 CPD ¶ 28 at 2.

Thus, the Army properly did not consider the bid modification on the outside of Lusa's bid envelope.¹ The fact that Lusa may have modified its bid in such a manner on previous procurements is not relevant to the propriety of accepting this bid modification. See, e.g., Barnes Electric Co., Inc., supra, at 3.

The protest is denied.

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¹Lusa argues, in the alternative, that the envelope inscription is not a bid modification but part of the bid. This argument has no merit. See Barnes Elec. Co., Inc., supra; Government Contract Servs., Inc., supra.