

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-192827, B-192796,
B-193062

DATE: February 9, 1979

MATTER OF: Forest Scientific, Inc.

DIGEST:

Concerning Authority of Signer

1. Where authority of signer of bid is questioned by contracting agency, burden rests on bidder to submit necessary documentation to demonstrate such authority. Preferably, such evidence would be included on standard form 129 which would be on file prior to bid opening. However, furnishing evidence after bid opening is not legally prohibited.
2. Question of signer's authority is essentially factual determination to be made upon consideration of all relevant evidence.
3. In absence of timely submission of probative evidence, protester has failed to satisfy its burden to substantiate authority of signer of bid.
4. Prior actions of contracting officials cannot estop Government's rejection of nonresponsive bid.
5. Where record does not contain probative evidence concerning awareness of protest basis, any doubt as to date on which knowledge was or should have been obtained should be resolved in favor of protester. Therefore, matter of award considered on merits.
6. Protest against Army making award when aware of protest, which Army denies, is rendered moot since record indicates protest was filed with GAO after award.
7. Bid accompanied by letter which sets forth unqualified bid price and alternate approach bid price is responsive since Army's acceptance of bid as submitted, would have effectively bound bidder to perform in accordance with terms and conditions of

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the IFB. Alternate approach is merely offer to be accepted or rejected by Army.

8. Contracting officer's determination that successful offeror's price was reasonable will not be disturbed unless it is unreasonable or there is showing of bad faith or fraud.

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Forest Scientific, Inc. (Forest), has protested the rejection of its bid pursuant to invitation for bids (IFB) No. DAAA22-78-B-0519, issued by the Department of the Army, Watervliet Arsenal (Army), on April 25, 1978, for housing, elevating mechanisms. The Army, citing the Armed Services Procurement Regulation (ASPR) (now the Defense Acquisition Regulation) § 2-404.2(2) (1976 ed.), rejected Forest's bid for lack of a valid signature by an authorized official of the firm.

In addition to IFB -0519, Forest has filed two other protests with our Office which question the rejection of Forest's bid by the Army for lack of a valid signature. The first, B-192796, concerns IFB No. DAAA22-78-B-0540 and the second, B-193062, concerns IFB No. DAAA22-78-B-0521. In the former, we note that there are initials beneath the "signature--Anthony Saginario" on Forest's bid while, in the latter, there are no initials. It is our view that the facts in all three instances are sufficiently analogous and that the issues raised with respect to the rejection of Forest's bids are the same. Accordingly, we will specifically consider B-192827 (IFB -0519) which will also be dispositive of the remaining protests.

ASPR § 2-404.2(a) provides:

"Any bid which fails to conform to the essential requirements of the invitation for bids shall be rejected."

The IFB incorporated by reference standard form 33A, March 1969, which provides, in paragraph 2(b), that:

"Each offeror shall furnish the information required by the solicitation.

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The offeror shall sign the solicitation and print or type his name on the Schedule and each Continuation Sheet thereof on which he makes an entry. Erasures or other changes must be initialed by the person signing the offer. Offers signed by an agent are to be accompanied by evidence of his authority unless such evidence has been previously furnished to the issuing office."

Forest's major contention is that a company can delegate to its employees the authority to act on its behalf and that such action would be binding on the company. Moreover, Forest believes that the personal signature of an owner or executive who is specifically authorized to bind his company is not necessary as long as the employee designated to act on behalf of the company is delegated the authority to sign the owner's or executive's name. Further, it appears that Forest is taking the position that such employee does not have to be listed on Standard Form 129, "Bidder's Mailing List Application." Notwithstanding, Forest argues that Anthony Saginario's name was signed by an authorized employee, Francine Garofalo, who is listed on form 129. We note that this argument was first made approximately 2 months after Forest's protest was filed with our Office and after award had been made. In addition, Forest is of the opinion that form 129, executed on September 23, 1976, is now obsolete since, if it was in force at this time, it would include the names of two additional authorized employees. Also, Forest, in its comments to the Army's report, questions for the first time the award of a contract, notwithstanding Forest's protest concerning rejection of its bid, to Ruoff and Sons, Inc. (Ruoff) whose bid was allegedly nonresponsive to the IFB and was 40 percent higher than the price quoted by Forest.

Form 129, dated September 23, 1976, provides that two persons, Anthony Saginario (President) and Francine Garofalo (Secretary), are authorized to sign bids in the name of Forest. The Army advises that initially Forest's bid "appeared proper which resulted in normal

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processing of the bid (i.e., a check on a possible mistake in bid and preaward survey)." A review of the bids received resulted in a letter dated May 31, 1978, which listed the amount of each bid and requested that Forest examine its bid since it appeared that the bid may be in error. In a June 16, 1978, letter, Forest confirmed its initial bid and this letter was personally signed by Anthony Saginario. Subsequently, the Army became cognizant of another procurement where initials were placed next to the signature of Anthony Saginario indicating that such signature was in effect a proxy signature. [See Forest Scientific, Inc., B-192742, September 13, 1978, 78-2 CPD 201, involving Forest's protest essentially questioning the Army's rejection of its bid as nonresponsive on the basis of Forest's utilization of a proxy signature. Forest's position was that "it may authorize whomever the firm wishes to represent the Company." Our Office found that Forest's protest was untimely filed.] Then, the Army examined Forest's instant bid to determine whether or not a proxy signature was utilized by Forest. The Army concluded that such was the case and rejected Forest's bid.

The record indicates that in a July 25, 1978, letter Anthony Saginario stated: "* * * I have not signed an IFB or RFP in at least eight years * * *." In addition, the Army advises that it suggested, even prior to the instant cases, that Forest execute a new form 129 giving the names of all persons presently authorized to sign bids for Forest. To date, the Army advises that Forest has not filed an updated form 129.

We agree with Forest that a company can delegate to its employees the authority to act on its behalf and thus bind the company. However, we believe that the contracting activity must be made aware of the signer's authority either by form 129 filed prior to bid opening or sufficient evidence submitted when the signer's authority is questioned. To do otherwise would unnecessarily hinder the procurement process and potentially damage the integrity of the bidding system, since this would keep open the question of the bid's validity.

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The burden rests on each bidder to submit the necessary documentation to demonstrate the authority of the signer. In this instance, Forest alleged, approximately 2 months after its initial protest and after award, that the signer was authorized since she was listed on form 129. However, this is merely an allegation, with no documentation to support it. Thus, Forest has failed to satisfy its burden to substantiate the authority of the signer. See New Jersey Manufacturing Company, Incorporated, B-179589, January 23, 1974, 74-1 CPD 25. Had the necessary information been submitted at the time when the signer's authority was first questioned, and deemed sufficient, Forest's bid would have been valid. See B-146348, December 8, 1961.

With respect to Forest's contention that form 129 is obsolete, we disagree. Until the time that form 129 is amended or revoked by the potential bidder it is valid. Consequently, it is up to the potential bidders to keep form 129 current and advise the procuring agency of any changes.

We have indicated that the absence of evidence existing before bid opening may make it difficult for the bidder to establish to the contracting officer's satisfaction that the individual signer of the bid was authorized to do so at the time of bid opening. See Square Deal Trucking Company, Incorporated, 49 Comp. Gen. 527 (1970). Therefore, we encourage the submission of such evidence prior to or at bid opening to avoid potential challenges and problems of substantiating the authority of the signer. See New Jersey Manufacturing Company, Incorporated, supra. However, the evidence required to establish the authority of the signer of a bid to bind a corporation may be presented after bid opening. See Corbin Sales Corporation, B-182978, June 9, 1975, 75-1 CPD 347. In this regard, it is our view that a bid signed by an agent should be rejected, as here, where proof of agency is not timely submitted. See New Jersey Manufacturing Company, Incorporated, supra. The evidence required to establish the authority of a signer of a bid to bind a corporation is for the determination of the contracting officer. See General Ship and Engines Works, Inc., 55 Comp. Gen. 422, 426 (1975), 75-2 CPD 269; Atlantic Maintenance Company, 54 Comp. Gen. 686, 692 (1975), 75-1 CPD 108.

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The record before our Office reflects that the contracting agency acted reasonably in concluding that Forest's bid was nonresponsive since Forest did not prove the signer's authority and, therefore, the signature did not bind Forest to the terms and conditions of the bid.

The fact that for the past 8 years a proxy signature was used by Forest does not change our opinion. The record indicates that the Army first became aware of Forest's utilization of proxy signatures in May 1978. Therefore, the past acceptance by the Army of Forest's bids was without knowledge of such practice. In any event, prior erroneous actions by contracting officials cannot estop the Army from rejecting Forest's instant bid as nonresponsive since it was required to do so by law. See A.D. Roe Company, Inc., 54 Comp. Gen. 271 (1974), 74-2 CPD 194; Prestex Inc. v. United States, 320 F.2d 367 (1963). Accordingly, Forest's protest regarding the rejection of its bid is denied.

Concerning Forest's last contention, the questioning of the award of a contract, our Bid Protest Procedures (Procedures) require that protests "be filed not later the 10 [working] days after the basis for protest is known or should have been known, whichever is earlier." 4 C.F.R. § 20.2(b)(2) (1978). The matter of the August 17, 1978, award of contract should have been known by Forest prior to the October 20, 1978, date it first raised this issue with our Office. However, we note that the record does not contain any probative evidence to indicate such awareness. In addition, we have been informally advised that the Army did not publish notice of the award in the Commerce Business Daily and the protester believes that its first awareness of award occurred when it received the Army's report. In cases as this, we have held that any doubt as to the date on which knowledge was or should have been obtained as to a protest basis should be resolved in favor of the protester. See Ampex Corporation, B-190529, March 16, 1978, 78-1 CPD 212. Therefore, we will consider the matter on the merits.

Forest initially questions the ethics of the Army in making an award when it was aware that Forest was protesting the rejection of its bid. In response, the Army submitted a supplemental statement of the contracting officer which provided, in pertinent part:

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"This Contracting Officer did not make an award to Ruoff and Sons at a time when he was aware that Forest Scientific was protesting rejection of its bid. Award was made on 17 August 1978 and Forest Scientific protested to GAO by a letter dated 25 August 1978. This Arsenal was initially advised of their protest orally by our higher headquarters on or about 30 August 1978."

Our Bid Protest Procedures, 4 C.F.R. § 20.4 (1978), provide:

"When a protest has been filed before award the agency will not make an award prior to resolution of the protest except as provided in the applicable procurement regulations. In the event the agency determines that award is to be made during the pendency of a protest, the agency will notify the Comptroller General."

The record indicates that award was made on August 17, 1978, and Forest's protest letter, dated August 25, 1978, was received by our Office on August 30, 1978, after award. Accordingly, Forest's protest is not a before-award protest as specified in 4 C.F.R. § 20.4, supra, but an after-award protest, rendering this issue moot.

Forest makes the allegation that Ruoff submitted a bid that was nonresponsive to the IFB since the "bid was modified to the extent that the price offered was contingent upon the Government supplying inspection equipment which was clearly defined in the IFB as the contractor's responsibility." The Army disagrees with Forest and states:

"Ruoff and Sons, Inc. was awarded this contract on the basis of a responsive bid wherein all provisions of the IFB were met. In addition to its responsive bid, Ruoff and Sons sent a letter which submitted for our consideration a price reduction of \$1.00

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per item if it were allowed to use Government gauges listed on page 27 of the solicitation which were presently in their possession for use on another Government contract. A modification dated 25 October 1978 has been entered into by mutual agreement of both parties to allow this \$1.00 reduction per item for use of the gauges; however, the bid accepted was responsive to the basic solicitation."

Ruoff's bid was accompanied by a letter, both dated May 16, 1978, which provided, in pertinent part:

"We submit for your consideration a price of \$147.00 EA for item 0001AB and \$145.00 EA for item 0001AC based on using Government gauges listed on page 27 which are presently in our possession for use on Contract DAAA22-77-C-0253.

"All other conditions remain the same."

It is clear that Ruoff's letter did not qualify Ruoff's bid. Therefore, the Army's acceptance of Ruoff's bid as submitted effectively bound Ruoff to perform in accordance with the advertised terms of the solicitation, which provide that it is the contractor's responsibility to provide inspection equipment. In addition, it is our view that Ruoff's letter makes it clear that Ruoff's offer to reduce its price if it was permitted to use Government gauges, already in its possession, was merely an offer of an alternative approach that the Army could accept or reject. See Nordam Division of R. H. Siegfried, Inc., B-187031, January 4, 1977, 77-1 CPD 3. As stated above, the initial contract, awarded August 17, 1978, was modified on October 25, 1978, to incorporate this alternate approach. Accordingly, this aspect of Forest's protest is denied.

Finally, Forest questions the reasonableness of the award price (\$147 per item), which is 40 percent higher than that quoted by Forest (\$87.50 per item). In support of its position, that Ruoff's price was reasonable, the contracting officer states:

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"The Government estimate for this procurement was \$76,145.00 for all 485 items or \$157.00 each.

"This estimate was based on the following procurement history of this item:

<u>QUANTITY</u>	<u>AWARDEE</u>	<u>COST/UNIT</u>	<u>DATE</u>
266	Ruoff & Sons	\$165	February 1978
144	Ruoff & Sons	\$128	June 1977
192	Ruoff & Sons	\$139	December 1976
343	MKB	\$187	August 1975

"Based on the Government estimate and the history involved, it was deemed the price was fair and reasonable."

Whether or not a bid price is reasonable is a matter of administrative discretion which our Office will not question unless it is unreasonable or there is a showing of bad faith or fraud. See Reza Seyyedini Art and Film Production, B-191470, August 21, 1978, 78-2 CPD 138; and Support Contractors, Inc., B-181607, March 18, 1975, 75-1 CPD 160. We have recognized that the agency may base its determination of price reasonableness on a Government estimate, past procurement history, current market conditions, or other relevant factors, including any which may have been disclosed by the bidding. See Westinghouse Electric Corporation, 54 Comp. Gen. 699 (1975), 75-1 CPD 112.

In this circumstance, there has been neither a showing of bad faith or fraud, nor, in view of the prior procurement history and Government estimate, can we say that such determination was unreasonable. Accordingly, our Office will not object to the contracting officer's finding that Ruoff's price was reasonable.

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For the foregoing reasons, Forest's protest is denied.


Deputy Comptroller General
of the United States