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DECISION



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

FILE: B-202965

DATE: December 31, 1981

MATTER OF: Cambridge Marine Industries, Inc.

DIGEST:

1. Where an agency questions authority of individual signing offer to bind the offeror firm, it must allow that firm an opportunity to provide proof of signatory authority after closing time for receipt of proposals.
2. Where the proposal submitted is a photocopy of a complete, manually signed original, it is a binding, properly executed offer.

Cambridge Marine Industries, Inc., protests the rejection of its low offer as being nonresponsive under Request for Proposals (RFP) N00104-81-R-2A21 issued by the Department of the Navy. The RFP called for the manufacture and delivery of a quantity of stuffing tubes for use in nuclear submarines. The Navy found that the Cambridge offer was nonresponsive because, in the contracting officer's view, it was improperly executed. In this regard, the contracting officer determined that the signature on the offer was not that of a person designated to contractually bind Cambridge. Furthermore, the Navy found the signature to be deficient because the Cambridge offer consisted of two photocopies of a completed and signed RFP with no original copy submitted.

For the following reasons, we believe the Navy erred in its determination that the Cambridge offer was nonresponsive.

Agent's Authority to Bind Cambridge

The Navy reports that the Cambridge offer was signed by Peter J. Plaxa, and that the contracting officer reviewed the contracting activity's company files on Cambridge and Herley Industries, a Cambridge

affiliate, and found no "Bidder's Mailing List Application" (Standard Form 129) or any other documentation which indicated that Mr. Plaxa was authorized to sign offers on behalf of Cambridge. Additionally, the contracting officer concluded that going back to Cambridge after the closing date for receipt of proposals to obtain evidence of Mr. Plaxa's authority would give that company an unfair advantage over other offerors because, in the Navy's view, such an action would give Cambridge "the opportunity of affirming or denying the authority of the person signing the offer on its behalf."

Cambridge disputes the Navy's claims that it had no Standard Form 129 or other documentation on file which authorized Mr. Plaxa to contractually bind the company. During the course of this protest Cambridge has submitted to the Navy and to our Office documents, including a Standard Form 129, which contain Mr. Plaxa's name and, which Cambridge asserts, were on file with the contracting agency at the time of the closing date for receipt of proposals. The Navy denies having any of this evidence on file prior to the closing date for receipt of proposals.

It is unnecessary to resolve this factual dispute, since we believe that the Navy should have permitted Cambridge to submit evidence of Plaxa's authority after the date set for the receipt of initial proposals.

Since 1970 our Office has held that in advertised procurements a bidder may furnish proof of agency, that is, of an individual's authority to sign offers on behalf of a company or other bidding entity, subsequent to bid opening and that the failure to furnish such information at bid opening will not render a bid nonresponsive. 49 Comp. Gen. 527 (1970). In that case we stated:

"If a principal should establish that a bid was submitted on its behalf by an individual not authorized to enter into contracts for him, the Government would have a possible cause of action against such unauthorized individual. * * * Therefore, it can be expected that any false disavowals would not go unchallenged by the agent. In any case, the Government has ample means to protect itself against fraudulent practices by bidders."

We do not believe the rule should be more strict in a negotiated procurement. In this respect, the Navy recognizes our prior holding and somewhat inconsistently implies that it would have accepted evidence of Plaxa's authority

from Cambridge after the proposal due date but that none was submitted. The Navy cites New Jersey Manufacturing Company, Incorporated, B-179589, January 23, 1974, 74-1 CPD 25, for the proposition that a bidder [offeror] will be allowed only a reasonable amount of time after bid opening in which to submit evidence of a questioned agency after which time the bid may be declared nonresponsive. The holding in that decision, however, reasonably assumes the fact that the bidder or offeror, at the very least, was on notice of the agency's concern and was offered an opportunity to provide the necessary evidence of authority. In the instant case, Cambridge was not informed by the Navy that Mr. Plaxa's agency was questioned before the proposal was rejected, and, therefore, Cambridge had no reason to submit any evidence, especially since it believed that this evidence was already on file with the Navy.

Based on the evidence submitted to the Navy and to our Office by Cambridge with the protest, we believe that Mr. Plaxa was in fact authorized to sign the offer in question.

Photocopy Signature

Cambridge reports that it prepared and signed its offer, made two photocopies of the complete signed offer and submitted both photocopies to the Navy. Cambridge states that it has been its normal practice to submit an original offer and one photocopy, but that in this case it inadvertently mailed both photocopies while keeping the original for its files.

In rejecting the Cambridge offer as nonresponsive, the Navy made the following determination:

"The offer submitted by Cambridge Marine is Xeroxed and the offer does not contain a manual signature. Nothing accompanied the offer indicating an intention to be bound thereto by Cambridge Marine. The contracting officer has examined the company files of Cambridge Marine and Herley Industries * * * and found nothing contained in either file indicating an intention to be bound by a Xerox signature * * *. To accept a Xerox signature without any substantiating evidence that such is the formal policy

of the company would, in effect, be giving Cambridge Marine the proverbial 'two bites at the same apple.' They could affirm or disaffirm the policy which would give them the options of allowing their offer to be accepted or rejected. The test in cases where the offer is not manually signed should be whether the offer as submitted will result in a binding contract upon the acceptance thereof without resort to further communication to ascertain the offeror's intention."

In making this determination, Navy analogized this circumstance to "unsigned bid" situations in which we have held that such a bid is nonresponsive because the contracting officer has no assurance that the bid was submitted by someone with authority to bind the bidder. For that reason, acceptance of such a bid would not have automatically obligated the named bidder to perform the contract advertised. B-160856, March 6, 1967. In this regard, for example, we have held that an unsigned bid stamped with a facsimile of the bidder's signature could not be considered for award. Id. Also, a bid with the typewritten or rubber-stamped name of the bidder, but without any signature, is nonresponsive. See, e.g., B-160125, November 25, 1966.

We believe this offer was legally binding and that the Navy's analogy to our cases dealing with unsigned bids is inappropriate since it is clear that the Cambridge offer was in fact manually signed. The offer submitted was, in effect a duplicate of the original, and we doubt that Cambridge would be in a position to disavow the binding effect of its offer if it later chose to do so. This is not the same as a rubber-stamped "signature" which can be affixed by anyone having access to the stamp. Rather, it was the actual signature of the party authorized to sign offers on the firm's behalf. In our view, the offer should have been accepted.

Award was made to the second low offeror, Sayco, Ltd. In these circumstances, we ordinarily would recommend that the Navy terminate the Sayco contract and award to Cambridge if otherwise proper. The Navy, however, has advised us that Sayco's production of the basic quantity is 85 percent complete and that production of an option quantity has been underway for several months. We do not believe it to be in the Government's best interest to recommend that the Navy terminate the Sayco contract because a change in contractors

at this time could delay deliveries of essential nuclear submarine components. However, by letter of today, we are bringing this decision to the attention of the Secretary of the Navy with our recommendation that steps be taken to preclude recurrence of the procurement deficiencies noted in this decision.

The protest is sustained.

For *Harvey R. Van Cleave*
Comptroller General
of the United States