

DECISION



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

FILE: B-215732

DATE: July 26, 1984

MATTER OF: IBI Security Service, Inc.

DIGEST:

Failure of corporate bidder to place the word "by" before authorized signature is a minor informality because the signature clearly indicates the intent of the bidder to be legally bound.

IBI Security Service, Inc. protests the award of a contract to the low bidder under invitation for bids (IFB) No. DAKF-06-84-B-0101, issued by the Department of the Army for guard services. IBI contends that the low bidder failed to execute its bid as required by the Federal Acquisition Regulation (FAR).

We deny the protest.

IBI points out that FAR, § 4.102(c), 48 Fed. Reg. 41,102, 42,113 (1983), (to be codified at 48 C.F.R. § 4.102(c)) states that a contract with a corporation shall be signed in the corporate name followed by the word "by" and the signature and title of the person authorized to sign for the corporation. The low bidder, a corporate entity, submitted a signed bid but did not place the word "by" before the signature. IBI does not challenge the authority of the person who signed for the low bidder and does not contend that the failure to include the word "by" has any effect upon price, quantity, quality, or delivery. IBI's sole argument is that because the low bidder did not comply with the literal wording of FAR, § 4.102(c), supra, its bid must be rejected as nonresponsive. The use of the word "shall" in the FAR provision means, IBI insists, that strict adherence to the signature requirement is intended and that previous interpretations relating to similar situations under the Defense Acquisition Regulation (DAR) are no longer applicable.

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We do not agree. FAR, § 4.102, supra deals with a contractor's signature on a contract; by definition, an offer in the form of a bid is not a contract. FAR, § 2.1, 48 Fed. Reg. 42,107. It is thus not at all clear that the portion of the regulation that IBI relies on was intended to apply to offers in response to a solicitation.

In any event, IBI overlooks FAR, § 14.405, 48 Fed. Reg. 42,180, which specifically permits waiver of minor informalities or irregularities when their effect on price, quantity, quality, or delivery is negligible. As an example of a minor informality or irregularity, FAR, § 14.405(c)(1), 48 Fed. Reg. 42,180 lists an unsigned bid which is accompanied by other material indicating the bidder's intention to be bound by the unsigned bid. This provision is the same as that in DAR § 2-405(iii)(B), reprinted in 32 C.F.R. pts. 1-39 (1982), and clearly reflects an intention to permit waivers of minor informalities or irregularities in appropriate cases in procurements conducted under FAR. Thus, we see no basis for the contention that previous interpretations in similar situations have become obsolete.

If an unsigned bid can be waived under the provisions of FAR, it follows that the failure of an authorized signer for a corporate bidder to place the word "by" before his signature can also be waived. The signature of the authorized signer here demonstrates the bidder's intention to be bound and, if the bid is accepted by the Army, a legally binding contract will result.

This protest is denied.

for 
Comptroller General
of the United States