

DECISION

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

FILE: B-220594**DATE:** December 31, 1985**MATTER OF:** Central Mechanical Construction, Inc.**DIGEST:**

1. A bid that is ambiguous as to price need not be rejected if it is low under all reasonable interpretations.
2. Authority of agent to submit bid modification may be established after bid opening.
3. A modification increasing the low bid, but not to more than the second low bid written on the envelope that contained the bid, should not be considered where circumstances indicate that the bidder obtained a possible advantage thereby, unless the bidder can establish that the higher bid was intended; otherwise, the contract amount should be at the lower price.

Central Mechanical Construction, Inc. (Central), protests award of a contract to N.G. Adair, Inc., under United States Army Corps of Engineers solicitation No. DACA41-85-B-0298, issued for the replacement of heating and air-conditioning facilities at Fort Riley, Kansas. Central contends that Adair's bid is ambiguous; that it improperly was modified at bid opening; and that the agent who wrote the bid modification did not have authority to do so. On these grounds, Central asserts that Adair's bid should be rejected as nonresponsive and, as a result, that the contract should be awarded to Central, the second low bidder, along with costs and attorney's fees. In the alternative, Central seeks bid preparation costs.

We do not agree that Adair's bid should be rejected as nonresponsive. The bid modification, however, which increased the bid but still kept it below Central's, should not be accepted.

Bid opening under the solicitation took place on September 25, 1985, at 3 p.m. Shortly before that time, a clerk from the contracting office relayed a message to Adair's representative, asking the representative to call

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Adair's offices. Corps employees directed the representative to a public telephone, and the representative later returned to the bid opening room and submitted Adair's bid. According to both Central and the contracting officer, after Adair's bid, the sixth out of seven bids, was taken from the sealed envelope and read aloud as \$1,622,000, Adair's representative drew the officer's attention to the following statement written in the corner of the envelope: "Add to our total bid for all buildings \$199,000. H.S. for N.G. Adair Inc." The contracting officer added the \$199,000 to Adair's bid of \$1,622,000 and then went on to open the seventh, and final bid. Adair's bid of \$1,622,000 was low and remained low even as modified to \$1,821,000. Central bid \$1,931,700.

The contracting officer reports that the bid opening office does not normally examine bid envelopes and that, as a matter of office practice, opens the envelopes, removes the contents, clips the contents together, and hands them to the reader. Furthermore, the contracting officer contends that the procedural irregularities surrounding Adair's bid modification--lack of signature and not enclosed in a sealed envelope with solicitation number and address for bid submission on front--are minor and waivable, and that the bid is not ambiguous and speculates that Adair's agent was instructed to modify the bid through the telephone call that preceded bid opening.

Central first argues that Adair's bid must be rejected as ambiguous because the writing on the envelope reasonably could be interpreted as merely an internal note to parties within Adair, with the bid inside the envelope already including the additional \$199,000, as well as a modification of the bid inside the envelope. However, even a bid that is ambiguous, that is, subject to two reasonable interpretations, need not be rejected if the bid is low under both. Ideker, Inc., B-194293, May 25, 1979, 79-1 C.P.D. ¶ 379.

Central also claims that the agent who signed Adair's modification was not clearly authorized by Adair to do so. Evidence of the authority of a bid signatory may be presented after bid opening, however, and it is left for the contracting officer to determine the amount and weight of evidence required. Dragon Services, Inc., B-208081, July 27, 1982, 82-2 C.P.D. ¶ 86. The contracting officer in the present case concluded, essentially, that verification

of the modified bid price by Adair's president, N. G. Adair, 1 day after bid opening sufficed to establish the representative's authority to modify Adair's bid. We see no basis to question that view.

Finally, Central contends that the unusual manner in which Adair's modification was submitted should render the bid nonresponsive. In this respect, bid modifications should be submitted in sealed envelopes bearing the proper address, the solicitation number, the name and address of the bidder, and the time specified for receipt. Federal Acquisition Regulation (FAR), 48 C.F.R. § 52.214-5 (1984).

Responsiveness concerns whether a bid constitutes an offer to perform, without exception, the exact thing called upon in the invitation. Vintage Services, Inc., B-190445, Jan. 11, 1978, 78-1 C.P.D. ¶ 25. Adair's bid complied with all the invitation's material provisions and was responsive. See FAR, 48 C.F.R. § 14.301.

Notwithstanding our finding that Adair's bid was responsive, we are concerned with the Corps' decision to accept the bid at the modified price, since we believe Adair's submission of its modification on the outside corner of the bid envelope provided Adair a possible advantage over other bidders. The writing was so inconspicuous in size and location on the envelope that the contracting officer did not see the writing until Adair's agent drew his attention to it after the bid was opened and read aloud. At that time, five other bids had been read and Adair thus knew all but one of the other bid prices. Had it suited Adair's interest, that is, had there been a bid less than \$199,000 more than the bid in Adair's envelope, the firm's representative could have kept silent to insure that the bid would have been low. Furthermore, Adair could have effectively renounced the modification after the opening by claiming that the agent lacked authority to modify; that the undated writing was an Adair internal note; or that the modification had already been incorporated into the bid price. The manner of the modification thus afforded Adair an option it either could exercise or refrain from exercising depending on its relative standing among other bidders.

Under the circumstances and although Adair's bid was responsive as discussed above, we believe the contract award amount should be \$1,622,000 unless Adair can prove that it initially intended to bid \$1,821,000. That proof should be pursued under the regulations applicable to mistakes in bids, which permit upward correction of a low bid where the

bidder provides clear and convincing evidence establishing the existence of both a mistake and the intended bid price. FAR, 48 C.F.R. § 14.406.

Because we do not find for Central, its claims for protest costs, attorney's fees and bid preparation costs are denied.

The protest is denied.

Harry R. Van Cleve

Harry R. Van Cleve
General Counsel