



Comptroller General
of the United States
Washington, D.C. 20548

859128

Decision

Matter of: American Eagle Industries, Inc.

File: B-256907

Date: August 8, 1994

Ronald S. Joseph for the protester.
Lester Edelman, Esq., Department of the Army, for the agency.
Christina Sklarew, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where invitation for bids does not permit submission of bids by facsimile but does allow bids to be modified by facsimile, a bidder's faxed modification does not render its bid nonresponsive merely because it instructs the agency to replace the original first page of its bid (which includes the bid price block) with a faxed page, thereby replacing the authorized agent's original signature with a faxed copy of the same agent's signature.

DECISION

American Eagle Industries, Inc. (AEI) protests the Department of the Army's proposed award of a contract to MDP Construction, Inc. under invitation for bids (IFB) No. DACA45-94-B-0019, which was issued for the construction of new aircraft hangar buildings, parking apron, and roadway work at the United States Air Force Academy in Colorado Springs, Colorado. AEI contends that the bid that MDP submitted was nonresponsive because it was improperly modified by facsimile transmissions. We deny the protest.

The Army Corps of Engineers, Omaha District issued the IFB in December 1993. The IFB advised bidders that neither facsimile nor telegraphic bids were authorized and would not be accepted, but that facsimile or telegraphic modifications or withdrawals of bids were authorized.

Twelve vendors submitted bids by the closing date of February 22, 1994. MDP had its initial bid package hand delivered to the agency on February 21. This package included the requisite signed certifications and representations, a bid bond with sufficient guarantee and

original signatures of the principal and surety, and a signed copy of the bid form. Instead of inserting a dollar amount in the price block on the bid form, MDP had written "REVISED BY FAX." The following day, MDP submitted three successive timely modifications to its bid by fax. Each of the modifications included a cover sheet instructing the agency to replace the first two pages of MDP's previous bid with the two new pages being transmitted by facsimile. The replacement pages included MDP's revised price for the work and were signed by the firm's president.

When bids were opened, it was apparent that MDP's latest revised price was low, while AEI's bid was second low. AEI protested to the contracting officer that MDP's revisions were improper and rendered MDP's bid nonresponsive. The agency denied AEI's protest and awarded the contract to MDP. This protest followed.

AEI acknowledges that where, as here, the solicitation authorizes the modification of bids by facsimile, a bidder may use a facsimile transmission to modify unit prices or line items that were not previously bid. See Ulysses, Inc.; Orlotronics Corp., B-187345; B-187356, Dec. 6, 1976, 76-2 CPD ¶ 464. Where facsimile transmission is authorized, a facsimile signature is acceptable. See Federal Acquisition Regulation (FAR) § 14.202-7; International Shelter Sys., Inc., 71 Comp. Gen. 142 (1992), 92-1 CPD ¶ 38. However, AEI contends that the modifications that MDP faxed to the agency were improper because they instructed the contracting officer to remove the first two pages of the firm's bid and replace them with the two pages that were faxed, thereby replacing the page of the original bid that contained the bidder's signature with a page that contained a faxed signature. The protester also argues that the modifications should have instructed the agency to increase or decrease the previously submitted price by the appropriate amount, instead of simply submitting the revised price.

We disagree that MDP's bid is nonresponsive. To be responsive, a bid must show on its face at the time of bid opening that it is an unqualified offer to comply with all the material requirements of the solicitation and that the bidder intends to be bound by the government's terms as set forth in the solicitation. M&G Servs., Inc., B-244531, June 27, 1991, 91-1 CPD ¶ 612. Here, MDP's original bid was signed by an authorized official, and each modification that it submitted by fax was signed by the same authorized official, demonstrating its intent to be bound by the terms of its bid. The fact that MDP, in its modification, instructed the agency to replace the first two pages in its bid with the pages it transmitted by facsimile does not negate that. The mere replacement of the page containing the bidder's original signature with a subsequently

submitted page does not somehow void the bidder's intention to be bound, as the protester suggests. As stated above, where, as here, facsimile transmission is authorized by the solicitation, the facsimile copy of the original modification containing the original signature evidences the signer's intent to be bound to the obligation created by the bid modification. International Shelter Sys., Inc., supra. Moreover, there is simply no requirement that a bid modification be submitted as the amount by which the prior bid is to be increased or decreased, rather than being submitted as the revised price. See FAR § 14.303 governing modifications.

The protest is denied.

/s/ Ronald Berger
for Robert P. Murphy
Acting General Counsel

Although the IFB authorized the submission of facsimile bid modifications, FAR § 14.303 provides that "[i]f the solicitation authorized facsimile bids, bids may be modified . . . via facsimile . . . subject to the cancellations specified in the provision prescribed in § 14.201-6(w)." Section 14.201-6(w) directs contracting officers to insert in solicitations the provision at FAR § 52.214-31, entitled Facsimile Bids, when facsimile bids are authorized. This solicitation did not contain the provision at FAR § 52.214-31 and did not authorize facsimile bids. Thus, while the contracting officer states that "FAR § 14.303 permits telefaxed bid modifications if, as here, such a method is authorized by the solicitation," the FAR envisions such modifications only where facsimile bids also are authorized. See Recreonics Corp., B-246339, Mar. 2, 1992, 92-1 CPD ¶ 249 (facsimile acknowledgment of an amendment not valid despite contracting office advice to the contrary, where IFB did not authorize facsimile bids).