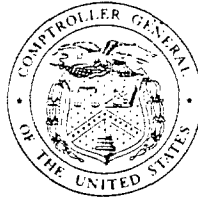


PRO. LAW II
R. Martin

DECISION



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

GPO
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8996

FILE: B-192979

DATE: January 30, 1979

MATTER OF: Jonard Industries Corporation

DIGEST:

[Rejection of Unsigned Bid as Nonresponsive Was Proper]

Bid submission, with samples, which included typewritten name and title of person authorized to sign but no signature, was properly rejected as nonresponsive and was not subject to correction or waiver as a minor informality under Federal Procurement Regulations § 1-2.405(c) (1964 ed.).

Jonard Industries Corporation (Jonard) protests the rejection of its unsigned low bid submitted in response to solicitation No. FTAN-F5-10087-8-8-78 issued by the General Services Administration (GSA). The solicitation was for certain tools, and required the submission of bid samples.

Jonard contends that even though its bid was unsigned, its intent to be bound by the terms of the solicitation was clear, that in one other instance GSA had accepted an unsigned bid from it and that the lack of a signature was an oversight and should have been waived as a minor informality. Jonard further objects because during the 45 days between bid opening and notification that its bid had been rejected it had refused business to conserve its production capacity for award on this procurement.

GSA contends that the lack of a signature was not subject to correction or waiver as a minor informality under Federal Procurement Regulations (FPR) § 1-2.405(c) (1964 ed.) because the bid contained only the typewritten name and title of Jonard's manager and there was no other acceptable evidence of an intent to be bound by the bid. It points out that the contracting officer visually checked the bid samples and the sample bid sheet and found no accompanying letters or signatures.

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It contends that the facts here parallel those in Marsh Stencil Machine Company, B-188131, March 23, 1977, 77-1 CPD 207, where it was held that an unsigned bid was properly rejected.

FPR § 1-2.405(c) provides that an unsigned bid can be corrected or waived only if the unsigned bid is accompanied by other material indicating the bidder's intention to be bound by the unsigned document or the bidder has authorized the execution of documents by typewritten, printed or stamped signature, submits evidence of such authorization and the bid contains such a signature.

Jonard's bid was unsigned and was not accompanied by a bid guarantee or any document signed by Jonard. There was no evidence to indicate that Jonard had formally adopted or authorized execution of documents by typewritten signature. Thus, the remaining question is whether Jonard's samples submitted prior to bid opening should be considered "other material" which indicates an intention to be bound by the unsigned bid.

We think the mere submission of samples, without more, is insufficient to manifest a firm intent to be bound to the requirements of an invitation when the bid itself is not signed. We recognize that ordinarily a bidder would not go to the trouble and expense of furnishing a sample unless it intended to submit a viable bid. On the other hand, the same thing can be said with regard to the preparation and submission of a bid; however, it is well established that the mere submission of a bid does not give rise automatically to a legal inference that the bidder intended to be bound by the bid. Rather, that intent must be indicated by a signature or something equivalent, as well as by something more when something more is required. 34 Comp. Gen. 439 (1955); 52 id. 874 (1973).

This requirement is necessary to prevent a bidder, after bid opening, from disavowing or attempting to disavow its bid. Obviously, anyone physically may submit a bid. It is the signature, however, which normally indicates if the bid is submitted by someone

authorized to do so, and it is upon the signature that a contracting officer must rely when determining if a binding bid has in fact been submitted. In other words, it is only by means of an authorized signature or equivalent that an agency can determine if the bid in fact constitutes the binding obligation of the bidder on whose behalf it was purportedly submitted. Thus, if the mere submission of an unsigned bid were to be regarded as manifesting an intent to be bound, the bidder would be given the opportunity, after bid opening, either to confirm the bid or to disavow it because it was submitted by someone without authority to do so. Allowing such an opportunity, of course, would be detrimental to the competitive bidding system. 34 Comp. Gen., supra; see 48 Comp. Gen. 801 (1969).

We think similar considerations militate against considering the submission of samples, without any accompanying documents containing an authorized signature, as reflecting the requisite bidder intent to be bound. Just as an unauthorized person can submit a bid, so can an unauthorized person submit a sample. Moreover, often (as in this case), the bid and the sample are not sent to the same location and may not be submitted at the same time; certainly under those circumstances we would find it questionable whether the sample could be viewed, in effect, as the equivalent of the signature that should have been on the bid. For example, the submission of a bid sample could indicate no more than an intention to maintain the option to bid until a final decision is made just before the bid opening date.

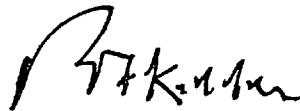
Except for the fact that Jonard had no representative present at bid opening, the circumstances of this case are similar to those considered in B-124029, June 1, 1955, where the protester submitted an unsigned bid on which the firm's name and address appeared in ink on all pages where the items and prices were listed. Prior to bid opening it also had submitted the required samples. After bid opening a representative of the bidder asked to see the bid and signed it. The authority of the representative was not in issue and it is unclear whether his presence was known to the procuring officials prior to bid opening. The prior decision held that:

"In the circumstances * * * the actual voluntary submission of Cohen's bid, accompanied as it was by samples of the items offered, is too clearly established to permit its disavowal or withdrawal, and without regard to the signature added after opening, its acceptance would have created an enforceable contract."

The submission of an unsigned bid and the presence at bid opening of a bidder's representative is not sufficient, in itself, to indicate an intention to be bound. B-144470, March 14, 1961; B-148235, March 23, 1962. Thus, in B-124029, supra, it would appear that the decision was predicated on the combination of circumstances, of which the submission of bid samples was only a part. However, to the extent that B-124029 can be interpreted as holding that no signature is required when samples are submitted prior to or with an unsigned bid, it is modified in accordance with the views expressed herein.

Finally, in response to Jonard's allegations, we point out that the fact that GSA may have accepted an unsigned bid from Jonard previously provides no legal basis for acceptance of an unsigned bid under the circumstances of this case. Further, while it is unfortunate that Jonard may have lost other business because it anticipated receiving this award, its bid cannot be accepted for that reason.

The protest is denied.



Deputy Comptroller General
of the United States