

# DECISION



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

60102

FILE: B-184405

DATE: October 29, 1975

MATTER OF: Edmund Leising Building Contractor, Inc.

97593

## DIGEST:

1. Bid which stated delivery would be made in 120 days, where IFB required delivery within 100 days, was properly rejected as nonresponsive because of material deviation from terms of IFB. While bidder contends 100-day delivery schedule is unrealistic, such allegation should have been raised prior to bid opening under § 20.2(b)(1) of GAO's protest procedures and is now untimely.
2. Failure of bidder to sign bid was properly waived as minor informality under FPR § 1-2.405(c) since bid was accompanied by properly signed bid bond which evidenced intent of bidder to be bound by bid.
3. Failure of procuring agency personnel to read aloud low bid received, which at time of opening was believed to be non-responsive, but upon further examination was found to be acceptable, is deviation of form from FPR § 1-2.402(a), not of substance, and does not affect validity of award. However, GAO recommends steps be taken to avoid recurrence in future of procedural shortcoming.

The Veterans Administration (VA), Batavia, New York, issued an invitation for bids (IFB) for project No. 513-102-75 on May 22, 1975. The project was for the construction of a shipping and receiving addition to the VA Hospital at Batavia.

Edmund Leising Building Contractor, Inc. (Leising), has protested the rejection of its bid and the acceptance of the unsigned bid of Louis Veile, Inc. (Veile), which was not read publicly at the bid opening on June 19, 1975.

Turning first to the rejection of Leising's bid, the IFB required completion of the project within 100 days after receipt of the notice to proceed. Leising, in its bid on Standard Form 21,

inserted a completion date of 120 days, thereby taking exception to the required delivery schedule. Leising contends that the 100-day completion time is unrealistic as some of the items to be incorporated in the construction are not available within that time frame.

Regarding the contention that the delivery schedule was unrealistic, the proper time to challenge the delivery schedule was prior to the opening of bids. Under § 20.2(b)(1) of our Bid Protest Procedures, 40 Fed. Reg. 17979 (1975), protests against alleged improprieties in a solicitation which are apparent prior to bid opening must be filed prior to bid opening in order to be timely. As this contention was not raised in a timely manner, we will not consider it.

Concerning the rejection of Leising's bid for failure to comply with the delivery schedule, our Office has held many times that in formal advertising the contract awarded to one bidder must be the contract offered to all bidders and only those deviations which are immaterial and do not go to the substance of the bid so as to prejudice the rights of other bidders may be waived. Deviations affecting price, quality, quantity or delivery go to the substance of the procurement and may not be waived. 46 Comp. Gen. 275 (1966). As Leising took exception to the required delivery schedule, its bid was nonresponsive and properly rejected by the contracting officer.

Leising contends that if its bid is nonresponsive, the bid of Veile should also be rejected because it was not signed. A review of Veile's bid shows that the name and address of the firm and the name and title of the official authorized to sign the bid were typed on the bid form but there was no handwritten signature in the space provided. However, the bid was accompanied by a bid bond signed by the official named in the bid form.

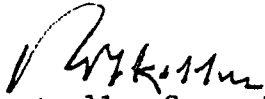
Federal Procurement Regulations (FPR) § 1-2.405(c) (1964 ed. circ. 1) provides that if a bidder fails to sign its bid, that failure may be waived as a minor informality if the bid is accompanied by other material indicating an intent to be bound by the bid, such as the submission of a properly signed bid guarantee. Accordingly, the failure of Veile to sign its bid was properly waived by the contracting officer. James J. Madden, Inc., B-181580, November 26, 1974, 74-2 CPD 290.

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Finally, Leising argues that the bid of Veile could not be accepted because it was not read publicly at bid opening. The contracting officer did not read the bid because of the assumption that since it was unsigned it was nonresponsive. However, after subsequent examination of the bid bond and disclosure that it was properly signed, the contracting officer considered the bid responsive.

While FPR § 1-2.402(a) (1964 ed. circ. 1) requires that when practicable bids should be read aloud at opening, the failure to read the bid was a deviation of form, not of substance and, therefore, does not affect the validity of the award to Veile. George C. Martin, Inc., B-182175, July 21, 1975, 75-2 CPD 55. However, we believe this procedural defect should be avoided in the future and, by separate letter of today, we are bringing this shortcoming to the attention of the Administrator of the VA and are recommending that steps be taken to insure that all procurement personnel involved with bid openings comply with this requirement of the FPR.

For the foregoing reasons, the protest is denied.

  
Deputy Comptroller General  
of the United States