

DECISION



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

Proc 2

10,588

FILE: B-194515

DATE: June 27, 1979

MATTER OF: William Gauger & Sons

DIGEST:

[Protest Against Rejection of Unsigned Bid]

Low bidder's submission of unsigned bid accompanied by other material, including bidder's signed form DD1707 incorporated in IFB, indicates bidder's intention to be bound by unsigned bid document and failure to sign bid was subject to waiver as minor informality pursuant to Defense Acquisition Regulation § 2.405 (iii) (B) (1976 ed.); therefore, recommendation is made that contract awarded to second low bidder be terminated for convenience and award made to low responsive bidder if otherwise proper.

DLB 01732

William Gauger & Sons (Gauger) protests the rejection of its bid as nonresponsive by the Procurement Division, Department of the Army, Fort Leavenworth, Kansas, under invitation for bids (IFB) DABT 19-79-B-0019, issued February 20, 1979, for grass mowing services. Gauger submitted the low bid at \$16,616 and the only other bid received was from Donnie Jackson (Jackson) at \$16,847. Gauger's bid was rejected as nonresponsive because the firm failed to sign its bid as required by the IFB. Award was made to Jackson on March 29, 1979.

Gauger contends that even though its bid was unsigned, its intent to be bound by the terms of the IFB was clear, and that the lack of a signature should have been waived as a minor informality.

Section 2.405 (iii) (1976 ed.) of the Defense Acquisition Regulation (DAR) states that the failure of a bidder to sign its bid is a minor informality if:

DLB 01942

Responsive bidder  
Bidder responsive

Maintenance  
Account  
Card

005710

"(B) the unsigned bid is accompanied by other material indicating the bidder's intention to be bound by the unsigned bid document such as the submission of a bid guarantee with bid, or a letter signed by the bidder with the bid referring to an clearly identifying the bid itself."

The above-cited regulation is in accord with decisions of our Office in which we have held that an unsigned bid may be considered for award if accompanied by some documentary evidence showing a clear intention by the bidder to submit the bid in question. See B-169594(1), October 27, 1970, 48 Comp. Gen. 648 (1969); B-164040, June 26, 1968; B-158607, April 21, 1966.

The Army Office of the Judge Advocate General contends, contrary to the decision reached by Fort Leavenworth, that the circumstances of the submission of Gauger's bid plus documentary information in the bid itself and the list of equipment submitted simultaneously with the bid present adequate evidence to support a determination that Gauger intended to be bound by the bid and any contract awarded to it. Therefore, the Army submits that Gauger's failure to sign its bid is subject to waiver and that Gauger's bid should not have been rejected. The Army report states in part:

"e. Although Mr. Gauger did not complete the Standard Form 33, he did sign the DD Form 1707, Information to Offerors or Quoters, acknowledging that he desired to be retained on the mailing list for future grass mowing procurements. The DD Form 1707 advised that if no response (that is, no bid) was to be submitted, it should have been detached and mailed separately, with no envelope required. Instead, Gauger submitted both a DD Form 1707 and a bid. The completed DD Form 1707 was included in the same envelope as the bid. It showed that Mr. Gauger was unfamiliar with

Government bidding procedures. This was his first experience in bidding on Government contracts.

"f. All entries on the Gauger bid were made in pen and ink, obviously by Mr. Gauger when one compares the entries with his signature (i) on the DD 1707 (ii) at two places on page 6 of his bid where he indicated that he was the person authorized to conduct negotiations and to be contacted concerning contract administration if his firm received the contract and (iii) on the sheet accompanying his bid showing the list of equipment the firm would use on the contract. Mr. Gauger also entered handwritten prices on the bid schedule at page 18 of his bid (Tab 2). Certainly the signatures therein and handwritten pricing entries evidence an intent to be bound by his bid."

We note that page one of standard form 33 of the IFB contains a table of contents and provides that "The Following Checked Sections are Contained In The Contract." Among the sections checked was the Cover Sheet which is Form DD1707, "Information to Offerors on Quoters." In submitting its bid Gauger included a signed Form DD1707. Under the circumstances, we believe Gauger's voluntary submission of the low bid in the form described, satisfactorily established the bidder's intention to be bound by its unsigned bid, so that a valid contract would be effected upon the Government's acceptance of the bid without resort to the bidder for confirmation of its intention.

Accordingly, the protest of Gauger is sustained and by letter of today to the Secretary of the Army we are recommending that Jackson's contract be terminated for the convenience of the Government and that an award be made to Gauger if otherwise proper.

The agency has advised our Office that it does not object to terminating Jackson's contract for the convenience of the Government as recommended by our Office.

*R. F. Keller*  
Acting Comptroller General  
of the United States