



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Government Contract Services, Inc.

File: B-226885

Date: August 27, 1987

DIGEST

Agency's determination not to consider changes written on bid envelope is legally unobjectionable where bidder did not adhere to prescribed procedural requirements for modifying bid; modification was signed by other than individual who signed standard bid form; and there was nothing in bid package indicating that signatory of modification was authorized to modify bid.

DECISION

Government Contract Services (GCS) protests the Veterans Administration's (VA) award of a contract to any other firm under invitation for bids (IFB) No. 603-86-126. GCS contends that the VA improperly failed to consider a bid modification, substantially reducing the prices quoted on its standard bid form, which was set forth on the front of its sealed bid envelope. Had this change been considered, GCS would have been the low bidder and in line for award.

We deny the protest.

The solicitation is for the expansion of the facilities housing the automated data processing system of the VA Medical Center located in Louisville, Kentucky. The IFB required bids on a base item plus three alternate items, each deleting various portions of the required work. Shortly before the bid opening, a representative of GCS hand-printed, in designated spaces typewritten on the front of GCS's bid envelope, amounts to be deducted from the prices quoted for each item on the standard bid form (which was inserted in the envelope and was signed by the firm's president). Several days after bid opening, the contracting officer declared GCS's bid nonresponsive because the bid envelope modification made it unclear whether GCS had offered a firm, fixed price.

In responding to GCS' protest of its rejection, the VA acknowledges that the initial basis for rejection was in

039869

error, but now argues that this case is indistinguishable from our decision in Central Mechanical Construction Inc., B-220594, Dec. 31, 1985, 85-2 CPD ¶ 730. There, we recognized that while a bid modification not in compliance with prescribed procedural requirements is not automatically precluded from consideration, an obscure bid change in the corner of the bid envelope was properly rejected because it essentially gave the bidder an option to accept or reject the award -- by calling attention to the change or not -- depending on the relative standing of the other bidders. The VA maintains GCS's modification affords it the same opportunity.

GCS argues that the Central decision is inapposite because the modification appearing on the front of its bid envelope differed from the alleged modification in Central in two material respects: (1) the modification here was set forth boldly on the center of the bid envelope, not obscurely in the corner of the envelope or elsewhere, thereby not affording GCS the option of not calling the VA's attention to the changes; and (2) it was clear that the amounts on the sealed bid envelope were to be deducted from those quoted on the standard bid form inside the envelope, the differences representing GCS's bid prices. GCS concludes that its bid, as modified, should have been accepted for award.

Although we agree that the circumstances here are somewhat different than those in Central, they are the same in one critical respect; as in Central, this modification was devoid of evidence demonstrating the authority of the representative to modify the bid. Ordinarily, the absence of evidence of a signatory's authority will not undermine a bid's acceptability since there is no general requirement that the government establish the authority of the individual signing a modification; authority, and consequently the validity of a modification, may be presumed where it is reasonable to do so. See Walsky Construction Co., B-213158, Nov. 21, 1983, 83-2 CPD ¶ 603. Where, however, a modification is not prepared in accordance with prescribed procedures, thus substantially increasing the likelihood that the modification was not authorized, this presumption is not reasonable.

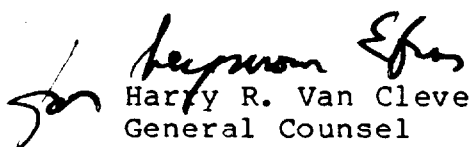
Here GCS did not comply with the prescribed procedures for modifying bids^{1/}, leading the agency to scrutinize the alleged modification closely to determine whether any of the irregularities could affect the binding nature of the bid.

^{1/} The solicitation provided that bid modifications shall be submitted in sealed envelopes or packages. See Federal Acquisition Regulation (FAR), 48 C.F.R. § 52.214-5 (1985).

In this light, the agency viewed the fact that the modification was signed by other than the individual who signed the bid form as casting doubt on the enforceability of the modification (i.e., since there was no indication that the signatory of the bid form was aware of the modification) or as at least affording GCS the option of later pointing to the different signatures as evidence that the modification should have been disregarded.

We find nothing objectionable in the VA's approach, and since there was nothing else in GCS's bid package indicating that the signatory of the modification was authorized to modify the bid, we conclude that the VA acted reasonably in not considering the changes set forth on the front of GCS's bid envelope.2/

The protest is denied.


Harry R. Van Cleve
General Counsel

2/ We have held that verification of agency after bid opening is permissible where the government would have a cause of action against an unauthorized agent if the principal disavowed the agent's authority. 49 Comp. Gen. 527 (1970). Where, as here, the agent did not comply with prescribed procedural requirements for submitting modifications, it is not clear that the government would have a cause of action against the unauthorized agent, and the rationale for allowing verification ceases to exist.