



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Barnes Electric Co., Inc.
File: B-228651
Date: October 2, 1987

DIGEST

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

DECISION

Barnes Electric Co., Inc., protests award to any other bidder under Veterans Administration (VA) invitation for bids (IFB) No. 567-16-87, issued for the replacement of an electrical distribution system at the VA Medical Center, Fort Lyon, Colorado. Barnes contends that the VA improperly failed to consider Barnes' bid price modification written on the front of its sealed bid envelope. Had this modification been considered, Barnes would have been the low bidder and in line for award.

We deny the protest.

Bidders were to submit prices for item 1 (the labor, equipment, and material required for the system installation) and item 2 (the equipment, without labor and material, required for the system installation). The IFB provided that item 2 would not be considered for award purposes unless funding was insufficient to permit an award on item 1. Since VA apparently has decided to make award based on item 1, the protest concerns only that item.

Sunbelt Electric Co., the apparent low bidder, submitted a price of \$694,000 for item 1; Barnes' price for the item

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was \$698,000. However, on the front of Barnes' bid envelope was a hand-printed notation stating: "Subtract \$9,000 from bid item # 1." The person delivering the Barnes bid to the agency informed the contracting officer prior to bid opening that he had written the notation on the envelope pursuant to an instruction from Barnes. If \$9,000 were subtracted from Barnes' bid price on item 1, Barnes would become the low bidder.

Bidders were advised in the IFB "Instructions, Conditions and Other Statements of Bidders" that bids and bid modifications "shall be submitted in sealed envelopes or packages"; bids also could be modified or withdrawn by telegraph. The contracting officer refused to consider the Barnes modification because it was not submitted in the manner provided for in the IFB and, therefore, placed Barnes in the position of being able to accept or decline award by either acknowledging the authority of its agent to make the notation or denying the existence of such authority. Relying principally on Central Mechanical Construction, Inc., B-220594, Dec. 31, 1985, 85-2 CPD ¶ 730, VA argues that the rejection of the bid modification was proper since, although Barnes' president had signed the bid, the notation on the envelope was unsigned and thus did not reflect on its face its author or the author's authority, and the notation could be argued to constitute an internal note regarding a price reduction that had been already incorporated into the bid price as submitted.

Barnes argues that the modification was properly made and should be accepted by the agency. Further, it contends that the Central Mechanical Construction, Inc. decision is distinguishable from this case, since here the contracting officer was aware of the modification prior to bid opening and was told by the person delivering the Barnes bid that he had written the notation on instructions from Barnes. Thus, Barnes argues, there can be no question that the notation was made by an authorized agent and that it was not merely an internal note regarding a price reduction already incorporated into the bid price as submitted. Barnes notes that the modification was placed on the envelope to avoid opening the sealed bid and that modifications made in the past in this manner have been found acceptable.

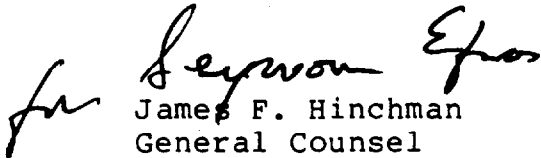
Although we agree that the circumstances here are somewhat different than those in the Central Mechanical Construction, Inc. case, they are the same in one critical respect--the Barnes modification was devoid of any evidence demonstrating the authority of the person delivering the bid to modify it. Ordinarily, the absence of evidence of a signatory's authority will not undermine the acceptability of a bid 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, Barnes did not comply with the procedures prescribed in the IFB, noted above, for modifying bids, leading the agency to scrutinize the alleged modification closely to determine whether any of the irregularities could affect the binding nature of the bid. In this light, the agency viewed the fact that the modification was not signed by the individual who signed the bid form as casting doubt on the enforceability of the modification (i.e., since there was no indication in the bid that the signatory of the bid form was aware of the modification) or at least as affording Barnes the option of later pointing to the fact that the person signing the bid form did not also sign the modification as evidence that the modification should have been disregarded. Since there was nothing in Barnes' bid indicating that the person delivering the bid had the authority to modify it, we conclude that the contracting officer acted reasonably in not considering the modification made on the front of Barnes' bid envelope. Government Contract Services, Inc., B-226885, Aug. 27, 1987, 87-2 CPD ¶ 204.

Finally, regarding Barnes' contention that it has made modifications in this manner in the past and they have been found acceptable, improprieties in past procurements are not relevant to the acceptability of the Barnes modification in this case. MZP, Inc., B-224860 et al., Dec. 19, 1986, 86-2 CPD ¶ 690.

The protest is denied.


James F. Hinchman
General Counsel