



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Qualicon Corporation
File: B-237288
Date: February 7, 1990

Henry D. Danforth, Esq., Watt, Tielder, Killian & Hoffar, for the protester.
Benjamin A. Hubbard, Outland, Gray, O'Keefe & Hubbard, for the interested party, Pittman Mechanical Contractors.
Vasio Gianulias, Esq., Office of the General Counsel, Department of the Navy, for the agency.
Jennifer Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Bid modification written on outside of bid envelope does not render bid nonresponsive where bid complied with all material requirements of the solicitation.
2. Contracting agency may consider a downward bid modification written on the bid envelope where agency's procedures for inspecting bid documents are sufficiently thorough that agency would have discovered the notation on the bid envelope regardless of whether the bidder called it to the agency's attention, and it was clear that the modification was not an internal note since it was signed by the individual responsible for preparing the bid.
3. Where bid modification is written on outside of bid envelope and is signed with the initials of the person who signed the bid, the contracting agency reasonably assumed that the person whose initials accompanied the modification signed the modification himself, not through an agent.

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DECISION

Qualicon Corporation protests the Navy's award of a contract to Pittman Mechanical Contractors, Inc., under invitation for bids (IFB) No. N62470-89-B-3781 for chiller replacement and building renovations at Building 3607, Naval Amphibious Base, Little Creek, Virginia Beach, Virginia. Qualicon contends that the Navy improperly considered a notation on Pittman's bid envelope as a downward modification to Pittman's bid price in determining that Pittman was the lowest bidder.

We deny the protest.

Pittman's bid was the fifth of 11 opened on September 21, 1989. The Navy representative read aloud and recorded Pittman's bid as \$459,000, which made it the highest of the five bids opened up to that point. As the Navy representative prepared to open the sixth bid, a representative of Pittman inquired as to whether there was something pertinent on the outside of Pittman's bid envelope. The Navy representative examined the bid envelope and discovered that the notation "Deduct-\$272,000 RCP" had been handwritten on the envelope; "RCP" are the initials of Pittman's president, Ronnie C. Pittman. The Navy representative determined that the notation was a bid modification and deducted \$272,000 from Pittman's bid, which was then recorded as \$187,000. The remaining bids were then opened. Qualicon's bid of \$208,880 was second low.

The protester argues that Pittman's bid should have been rejected as nonresponsive because Pittman failed to comply with the solicitation requirement that all bid modifications be submitted in sealed envelopes. We disagree. Responsiveness concerns whether a bid constitutes an offer to perform, without exception, the exact thing called for in the invitation. Central Mechanical Constr., Inc., B-220594, Dec. 31, 1985, 85-2 CPD ¶ 730. Since Pittman's bid complied with all of the IFB's material provisions, it was responsive.

Qualicon also argues that the notation on Pittman's bid envelope gave Pittman an advantage over other bidders by allowing it to select between its price with the modification and its price without the modification after other bids had been exposed. The protester contends that Pittman could have brought the notation to the attention of the Navy, or remained silent, depending on its status relative to other bidders, and that even if the Navy representative had noticed the notation on her own, Pittman could have claimed

that the writing was an internal note or that the deduction had already been incorporated into its bid price. Furthermore, the protester argues, because the handwriting of the signature on the bid and the notation on the bid envelope were dissimilar, Pittman could have disavowed the writing on the envelope as unauthorized. Qualicon also argues that the amount of the modification was unclear since the notation could be read as "Deduct-\$272.000" or "Deduct-\$272,000" and that in either case the instruction to "deduct," without more, is not sufficiently clear.

As support for its position, Qualicon relies principally on our decision, Central Mechanical Constr., Inc., B-220594, supra. In that case, we held that a bid modification entered on a bid envelope should not be considered where it was so inconspicuous in size and location on the envelope that the contracting officer could not reasonably be expected to have seen it. We also noted the potential for other abuses by the bidder submitting the bid modification; Qualicon maintains that these same abuses--for example, the opportunity to remain silent and not bring the modification to the agency's attention--could occur here. As explained in detail below, we think that under the circumstances of this case, the potential for abuse by Pittman is sufficiently remote that the modification may be considered.

As a preliminary matter, the agency maintains--and we agree--that the only reasonable interpretation of the notation on the envelope is "Deduct-\$272,000" since the writer would not have included three zeroes after the punctuation mark if he had intended it as a decimal point.

With regard to the protester's argument that the notation permitted Pittman to choose between its price as modified, by calling the notation to the Navy's attention, or its price as unmodified, by remaining silent, the Navy contends that it would in the normal course of business have reviewed the bid envelopes for any notations that might have an impact on the bids, and that it therefore would have discovered the notation--and applied it to Pittman's bid--even if Pittman had not called the notation to its attention. In our view, since the Navy's procedures for inspecting bid documents are sufficiently thorough that a bidder would not have the opportunity in effect to renounce a bid modification by declining to bring it to the agency's attention, those procedures eliminate the opportunity for the type of abuse of the competitive bidding process suggested by the protester here.

The Navy also contends that the modification would have been binding on Pittman because it was initialed by the company's

president, Ronnie C. Pittman, and that Pittman therefore could not have renounced the modification by claiming that it was an internal note or that the deduction had already been incorporated into its bid price.

In the circumstances of this case, we agree that Pittman could not have renounced the modification by claiming that it was an internal note. We think that it is clear when the notation is considered in the context of the bid as a whole that it was directed at a party outside the company. In particular, we note that Ronnie C. Pittman certified elsewhere in the bid that he was responsible for the preparation of the bid; thus any internal communication concerning bid price would have been addressed to him. Although it is conceivable that Mr. Pittman would have written a note to himself on the bid envelope, it seems highly unlikely that he would have signed a reminder to himself with his initials. In our view, then, the notation on the bid envelope clearly was not an internal note.

Similarly, we find that it was clear that the instruction "Deduct-\$272,000" meant that the bid price contained in the bid envelope was to be reduced by the amount written on the outside of the envelope. Given that the notation was written on the envelope containing the bid and that it was signed with the initials of the person who signed the bid, it is not reasonable to assume that the notation reflects a deduction already taken from the bid inside the envelope, as Qualicon argues.

Finally, with regard to the protester's argument that due to the difference between the way Ronnie C. Pittman's signature appeared on the bid and the way his initials appeared on the bid envelope, Pittman could have disavowed the writing on the envelope as unauthorized,^{1/} we think that the agency properly may presume that an individual has signed his own

^{1/} We note that this case is distinguishable from our decisions in Government Contract Services, Inc., B-226885, Aug. 27, 1987, 87-2 CPD ¶ 204, and Barnes Electric Co., Inc., B-228651, Oct. 2, 1987, 87-2 CPD ¶ 331, which also involved bid price modifications written on bid envelopes, in that here both the bid and the modification on the envelope were signed by the same individual. In Government Contract Services and Barnes, in contrast, the modification was not signed by the signatory of the bid form and there was no evidence in the bid package that the author of the modification had been authorized to modify the bid, which led the agency reasonably to question the enforceability of the modification.

name or initials unless it is indicated that one party is signing on behalf of another (e.g., John Doe by Jane Roe). Since in this case it was not indicated that the initials "RCP" on the bid envelope had been written on behalf of Ronnie C. Pittman by another individual, we do not think that Mr. Pittman could have disavowed the writing as not his own.

The protest is denied. Accordingly, Qualicon's claim for bid preparation costs and protest costs, including attorneys' fees, also is denied.



James F. Hinchman
General Counsel