

149374
Cunningham



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: FCC Construction, Inc.

File: B-250304

Date: January 11, 1993

Ralph A. Braden, Jr., Esq., Braden, Frindt, Stinar & Stimple, for the protester.
Mary S. Byers, Esq., Department of the Army, for the agency.
James M. Cunningham, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Bidder's failure to sign telecopied bid modification may not be waived where no other document evidencing an intent to be bound and signed by the bidder accompanied the modification.

DECISION

FCC Construction, Inc. (FCC), protests the rejection of a telecopied bid modification under invitation for bids (IFB) No. DACA45-92-B-0105, issued by the Omaha District, United States Army Corps of Engineers, on July 31, 1992, for the construction of a child development center at Peterson Air Force Base, Colorado.

We deny the protest.

The IFB required that bids be received by 2 p.m. on September 1, 1992, and provided that mailed bids could be subsequently modified or withdrawn by telecopier. FCC's original bid was received by the Army via Federal Express at 10:23 a.m. on September 1. Later that same day, FCC sent by telefacsimile (fax) three attempted modifications to its bid. FCC's first fax transmission was timely received before bid opening at 1:40 p.m. The cover page of this fax (as well as the cover page of the two subsequent FCC faxes) contained the sender's printed name, "SUZANNE." The next

page of this modification consisted of a copy of the Standard Form (SF) 1442 (Solicitation, Offer, and Award) which FCC had previously submitted with its original bid. The third page of this first fax contained the signature of Scott A. Bryan, FCC's Vice President and General Manager, in block 20(a), entitled "Name and Title of Person Authorized to Sign Offer." The last page of this fax consisted of a revised pricing schedule which the contracting officer accepted for bid evaluation purposes. FCC's two subsequent September 1 faxes were identical, and were only two pages in length, consisting of the cover page and a revised price schedule on the next page.¹

FCC argues that the absence of a signature on these two faxes should be waived as a minor informality since the IFB is silent as to whether a faxed bid modification must be signed. We disagree.

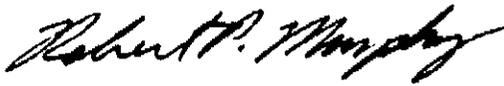
As a general rule, an unsigned bid must be rejected as nonresponsive because without an appropriate signature, the bidder would not be bound should the government accept the bid. Jennings Int'l Corp., 68 Comp. Gen. 79 (1988), 88-2 CPD ¶ 472. This requirement is necessary to prevent a bidder, after bid opening, from disavowing or attempting to disavow its bid to the detriment of the sealed bidding system. Power Master Elec. Co., B-223995, Nov. 26, 1986, 86-2 CPD ¶ 615. There is an exception to this general rule allowing for waiver of the failure to sign the bid as a minor informality when the bid is accompanied by other documentation signed by the bidder which clearly evidences the bidder's intent to be bound by the bid as submitted. Federal Acquisition Regulation (FAR) § 14.405(c)(1); Wilton Corp., 64 Comp. Gen. 233 (1985), 85-1 CPD ¶ 128.

These rules apply to bid modifications as well as to bids since the modification is, in essence, a new bid. Jennings Int'l Corp., supra; Barnes Elec. Co., Inc., B-228651, Oct. 2, 1987, 87-2 CPD ¶ 331. These same rules apply to consideration of faxed bid modifications where, as here, the IFB is silent as to whether a faxed bid modification must be signed. Jennings Int'l Corp., supra. Accordingly, the agency properly accepted FCC's first, signed, faxed modification, and properly rejected FCC's subsequent unsigned faxes, which were not accompanied by other

¹The Army also states that both of these later faxes were received after bid opening and, therefore, were unacceptable. FCC argues that both faxes should be considered timely received by the Army. We need not resolve this issue in view of our conclusion that these subsequent attempted bid modifications were ineffective because they were unsigned.

documentation, signed by an authorized FCC representative,
which clearly evidences FCC's intent to be bound by the
modifications contained in the faxes.

The protest is denied.


for James F. Hinchman
General Counsel