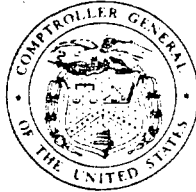


DECISION

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

60059 97817

FILE: B-184488

DATE: October 17, 1975

MATTER OF: Shippers Packaging and Container Corporation

DIGEST:

1. Where bidder was told on June 26 that bid was being rejected and at that time requested that his attorney discuss matter with procuring activity and attorney did so on several occasions until July 7, protest filed with GAO on July 15 is timely as discussions after June 26 constituted reasonable attempt by bidder to resolve protest at agency level, as contemplated by our regulation, and protest was filed with GAO within 10 working days after conclusion of discussions.
2. Bid which contained name and address of bidder and name and title of official authorized to sign bid but was not signed may be considered for award because bid schedule contained initials of official next to change in bid price, thereby evidencing intent to be bound by bid.
3. Failure to acknowledge amendment which relaxed specifications may be waived because bidder obtained no advantage over other bidders as it was bound to perform under acceptable and more onerous original specifications and therefore gained no price advantage.

Shippers Packaging and Container Corporation (Shippers) has protested the rejection of its low bid under invitation for bids (IFB) No. DAAA22-75-B-0556, issued by the United States Army, Watervliet Arsenal, Watervliet, New York.

The IFB is for a quantity of shipping containers. When bids were opened on June 24, 1975, it was discovered that the bid of Shippers was not properly signed and also that amendment 0001, while returned with the bid, was not acknowledged. Therefore, the contracting officer determined the bid to be materially defective and rejected it.

Before reaching the merits of the protest, it is necessary to resolve a matter which has been raised by the Army, namely the timeliness of the protest under our Bid Protest Procedures (40 Fed. Reg. 17979 (1975)).

As stated above, bid opening was June 24, 1975, and on June 26, 1975, according to the Army, Shippers was notified by telephone that its bid was being rejected for the above reasons. The Army contends, therefore, that June 26 is the date on which Shippers received notice of the "adverse agency action" and that it had 10 working days from that date within which to file its protest. As its protest was not received at GAO until July 15, 1975, the Army contends that it is untimely.

We have reviewed the record before our Office on this issue and believe the protest to be timely. While it appears from the Army's record of the telephone conversation of June 26, that Shippers was told that its bid was rejected, the record also shows that the protester stated he would like his attorney to meet with the Army's legal staff to discuss the matter further and that Shippers' attorney discussed the matter with the Army on several occasions until July 7. We believe this attempt on the part of Shippers to have the Army reverse its decision, as contemplated by our regulation (§ 20.2), was reasonable and, therefore, the time for filing the protest with GAO did not begin to run until July 7, thereby making the protest of July 15 timely. Columbia Van Lines, Inc.; District Moving and Storage, Inc., 54 Comp. Gen. 955 (1975), 75-1 CPD 295.

Turning to the merits of the protest, the bid of Shippers contained the manually printed name and address of the firm and the name and title of the person authorized to sign the bid, however, there was no signature in the block on the bid form so designated.

In this regard, the contracting officer refers to Armed Services Procurement Regulation (ASPR) § 2-405 (1974 ed.), which reads in part as follows:

"2-405 Minor Informalities or Irregularities in Bids. A minor informality or irregularity is one which is merely a matter of form or is some

immaterial variation from the exact requirements of the invitation for bids, having no effect or merely a trivial or negligible effect on price, quality, quantity, or delivery of the supplies or performance of the services being procured, and the correction or waiver of which would not affect the relative standing of, or be otherwise prejudicial to, bidders. The contracting officer shall either give to the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid, or, waive any such deficiency where it is to the advantage of the Government. Examples of minor informalities or irregularities include:

* * * * *

"(iii) failure of a bidder to sign his bid, but only if--

- (A) the firm submitting the bid has formally adopted or authorized the execution of documents by typewritten, printed, or rubber stamped signature and submits evidence of such authorization and the bid carries such a signature, or
- (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 and clearly identifying the bid itself; * * *"

Because the contracting officer determined that ASPR § 2-405(iii)(A) (1974 ed.) was inapplicable to the instant case and nothing was submitted with the bid to fulfill the requirement of subsection (B), he rejected the bid as there was no indication that the bidder would be bound thereby.

However, as noted by both the Army and the protester, the bid of Shippers on page 11 contained the hand-written initials of the official authorized to sign the bid next to a change in the bid price for item 0002AB, which was originally entered on the wrong line.

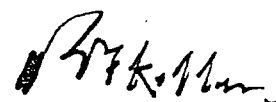
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Our Office has had before it this same factual situation in the past and has held that such a bid may be considered for award because the initials of the official authorized to sign the bid evidenced an intent to be bound. In B-139401, April 23, 1959, the bidder did not sign the bid, but had initialed a change in its bid price and we held the bid to be acceptable. See also B-158607, April 21, 1966, for a similar result.

The second basis for rejecting Shippers' bid was the failure to acknowledge or sign amendment 0001, which it returned with the bid. Amendment 0001 relaxed two portions of the specifications and extended the bid opening date.

The general rule with regard to the failure of a bidder to acknowledge an amendment is that if an amendment affects the price, quantity or quality of the procurement, the failure of the bidder to acknowledge that amendment in the manner required by the invitation cannot be waived. 41 Comp. Gen. 550 (1962) and ASPR § 2-405(iv)(B) (1974 ed.). This rule is based on the principle that acceptance of a bid which disregards a material aspect of an invitation would be prejudicial to other bidders because the bidder who failed to acknowledge such an amendment would not be bound to perform in the same manner as the other bidders who did acknowledge the amendment. We have held, however, that failure to acknowledge an amendment which relaxes the specifications, thereby making performance less expensive, does not require rejection of the otherwise low responsive bid, since acceptance of that bid based on the original specifications, which are acceptable and more onerous than the specifications as amended, would not prejudice any other bidder. Titan Mountain States Construction Corporation, B-183680, June 27, 1975, 75-1 CPD 393.

Therefore, the protest of Shippers is sustained and its bid may be considered for award if otherwise proper.


Deputy Comptroller General
of the United States