

DECISION



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

P. J. J. J. J.
Proc. J.
8435

FILE: B-191312

DATE: November 27, 1978

MATTER OF: Burns Electronic Security Services, Inc.

DIGEST:

1. Failure of low bidder to comply with bid guarantee provisions of IFB makes bid nonresponsive, and rejection of bid is proper.
2. GSA modified IFB by amendment but inadvertently neglected to provide space for bidder's signature on modified bid form. Where bidder attached original bid form to modified bid form and original bid form was signed by bidder's secretary, bidder's intent to be bound is clear and bid is not nonresponsive for this reason.
3. Failure to initial bid correction made with liquid paper where there is no doubt as to intended bid price is an informality which may be waived in interest of Government.
4. Bid guarantee is responsive where it is signed by individual but indicates that individual signed in his capacity as secretary of bidder, notarized deposition attached to bid bond indicates that such individual is secretary of bidder, and contracting officer ascertained that bidder's secretary had authority to sign bids and contracts on behalf of bidder.
5. Failure to complete supplement to Standard Form 19-B, "Representations and Certifications," in advertised procurement does not make bid nonresponsive since Standard Form 19-B is applicable only in negotiated procurements. Even where applicable, failure to complete Standard Form 19-B does not render bid nonresponsive and required information may be submitted after bid opening.

6. Deficiencies alleged in bids of third and fourth low bidders will not be considered where agency proposes to award to second low bidder, because in view of our finding that second low bidder is responsive, such issues are academic.

By letter dated July 6, 1978, counsel for Burns Electronic Security Services, Inc. (Burns), has protested the award of a contract to any other bidder for General Services Administration (GSA) Project No. INY77032 (INY75015) involving repairs and alterations to the fire alarm, voice alarm, and environmental controls system at the United States Customs Court and Federal Office Building, New York, New York.

The invitation for bids (IFB) was issued on April 19, 1978, and the four bids received were opened on May 19, 1978. Burns submitted the apparent low bid of \$3,230,000. However, Burns' bid was rejected as nonresponsive because it did not contain the required bid guarantee. On May 23, 1978, Burns protested to the GSA but no determination has been made on that protest to date. At present, GSA proposes to make award to the second low bidder, PJR Construction Corporation (PJR), at a bid price of \$3,661,000. Burns has protested to our Office on several bases. First, Burns contends that it should be awarded the contract because, although it failed to submit the required bid bond, acceptance of Burns' bid will result in a savings of \$431,000 to the Government. Second, Burns contends the bids of PJR and the other two bidders are not responsive to the IFB and should, therefore, be rejected.

Regarding the rejection of Burns' bid as nonresponsive because it was not accompanied by a bid bond, the requirement for submission of a bid guarantee was contained in section 0110-4 of the Special Conditions of the solicitation. Burns did not submit a completed Bid Bond form (Standard Form 24). Instead, Burns' bid was accompanied by a letter from its surety which indicated that the surety was reviewing Burns' year end financial exhibits and stated that, "Dependent upon favorable review of current financial information the undersigned surety will give full consideration to providing the required Performance Bond on the above contract."

Section 1-10.103-4 of the Federal Procurement Regulations (FPR) requires that a bid which is not supported by a bid guarantee when a bid guarantee is required by the IFB must be rejected, except in four situations which are not applicable in the present case. 41 C.F.R. § 1-10.103-4 (1977). Moreover, our Office has consistently held that the requirement that a bid bond be submitted is a material part of the solicitation, that the failure of a bid to comply with the bid guarantee provisions requires rejection of the bid as nonresponsive, and that failure to submit a bid bond may not be waived or otherwise excused. Cassidy Cleaning, Inc., B-191279, April 27, 1978, 78-1 CPD 331; 38 Comp. Gen. 532 (1959). The letter from Burns' surety company is not sufficient to meet the solicitation requirement for a bid bond, and, therefore, rejection of Burns' bid as nonresponsive was proper. The fact that award will be made at a higher price because of the rejection of Burns' bid does not mean that it is in the Government's interest to waive the bid bond requirement since we have repeatedly held that the resulting monetary savings do not outweigh the public interest in the strict maintenance of the public bidding procedures. See Cassidy Cleaning, Inc., *supra*.

Regarding Burns' contention that the bid of PJR, the proposed awardee, is nonresponsive, Burns alleges several deficiencies. First, Burns contends that the bid package submitted by PJR contained two bid forms quoting three different prices. Burns alleges that one of the bids should be rejected as nonresponsive because it does not bear the manual signature of PJR. Burns contends that the other bid contains uninitialed erasures and several different prices, and, therefore, it is ambiguous and should also be rejected as nonresponsive.

According to the GSA, the solicitations originally contained the bid form (Standard Form 21) which was printed on both sides. The front of the form contained a space for each bidder to enter the lump-sum dollar amount of its bid and the back of the form contained a space for the bidder's signature. By Amendment No. 2, the bid form was modified by GSA to provide a space on the front of the form for bidders to enter a separated price representing the amount included in the lump-sum

bid for items included in the P.A., Voice Alarm, Voice Communications System (excluding RPS, BCPS, and DIU items which monitor and control the P.A., Voice Alarm, Voice Communications System). However, due to GSA error, the back side of the modified bid form was left completely blank and did not contain any space for the bidders' signatures. All four bidders therefore filled in the blanks regarding lump-sum and separated prices and placed their signatures on the back of the original bid form. Each bidder then attached the original bid form, including signature, to the front page of the modified bid form. PJR submitted an envelope containing two separate sets of such bid documents. The GSA report states that one set was basically a duplicate of the other, although it did contain a minor deviation from the original.

Concerning Burns' allegation that one of the bids was not signed and should have been rejected as nonresponsive for that reason, we agree that the failure of a bidder to sign its bid cannot generally be waived or corrected as a minor informality or irregularity after bid opening. See, for example, Marsh Stencil Machine Company, B-188131, March 23, 1977, 77-1 CPD 207. However, in the present case, the record shows that both of PJR's sets of bid documents had the original bid form containing the signature of Ronald H. Lieberman (in his capacity as secretary of PJR) on the back side attached to the modified bid form. Since the modified bid form had had the signature block inadvertently omitted and because of the manner in which PJR had attached the original bid form containing its signature to the defective modified bid form, we believe that the intent of PJR to be bound by its bid is clear and cannot find its bid to be nonresponsive on this point. Moreover, PJR submitted a bid bond with its bid which was signed by PJR's secretary. Under section 1-2.405(c) of FPR, the submission of a signed bid guarantee evidences the intent of a bidder to be bound by its unsigned bid and thus allows the lack of a signature on the bid to be corrected as a minor informality or irregularity. 41 C.F.R. § 1-2.405 (1977). Therefore, even if the bid had been unsigned, the defect could properly have been waived by the contracting officer.

Regarding Burns' allegation that one set of PJR's bid documents contained uninitialed erasures, we have consistently held that, if an uninitialed erasure and correction leave no doubt as to the intended bid price, there is a legally binding offer, acceptance of which would consummate a valid contract which the bidder would be obliged to perform at the offered price. See 49 Comp. Gen. 541 (1976) and cases cited therein. The record shows that the bid document containing the uninitialed erasures consisted of three pages. Page one was the modified bid form and contained blanks in which PJR entered its lump-sum and separated prices in both words and figures. The entry stating the amount of the lump-sum bid in words had been corrected by using white correction fluid or "liquid paper" and was not initialed by PJR. Pages two and three of this bid document were the front and back sides of the original, unamended bid form which PJR had attached to the amended bid form because of the failure of GSA to provide a space for the bidder's signature on the amended version of the bid form. PJR could have left page two completely blank since it merely restated the lump-sum bid price (in both words and figures) which was already indicated on page one. However, the blank for indicating the lump-sum bid in words was partially filled in with words "THREE MILLION" in dark print immediately followed by the words "SIX THOUSAND SIXTY" in very light, partially erased print. GSA indicates that this entry appears to be a carbon copy of the same five words which appeared on page one before the correction was made on page one with white correction fluid. GSA concluded that there was no doubt that PJR's intended bid was \$3,661,000 since the first page stated that price in both words and figures and because the duplicate of the bid indicated the same price. Therefore, GSA believes that waiver of the irregularities is proper and that the bid is responsive.

We agree with GSA's determination since we believe that it is clear that a bid price of \$3,661,000 is the only reasonable interpretation of the bid and that PJR's intent to be bound at this figure only is clearly expressed in its bid. Accordingly, we find no ambiguity in the bid. See in this regard Durden & Fulton, Inc., P-192203, September 5, 1978, 78-2 CPD 172, wherein we held that an uninitialed correction made with "liquid paper" could properly be waived. Moreover, we have held

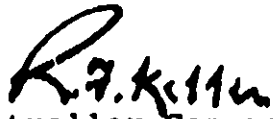
that, in the event that a bid contains two conflicting prices, the bid is ambiguous and must be evaluated on the basis of the higher price to avoid prejudice to other bidders. Action Manufacturing Company, B-186195, July 23, 1976, 76-2 CPD 73. In the present case, the GSA concluded, and we agree, that the highest price (\$3,661,000) of the three possible interpretations asserted by Burns was the intended bid. Accordingly, no prejudice to other bidders exists.

Burns has also alleged that PJR's bid should be rejected as nonresponsive because PJR's bid bond is defective. Burns contends that PJR's bid bond is defective since it was signed by an individual rather than by PJR. We do not agree. PJR's bid guarantee was executed and signed as follows: "Ronald H. Lieberman Secretary" and was attached to a notarized deposition indicating that Ronald H. Lieberman is the secretary of PJR. There is no doubt but that the bid bond was executed by the secretary of PJR in his capacity as secretary, and GSA indicates that the contracting officer ascertained that PJR's secretary had been authorized to sign bids and contracts on behalf of PJR. Moreover, we have even allowed a bidder's failure to sign a bid bond to be waived as a minor informality where it accompanies a signed bid which identifies the bid bond. See, for example, Forest Service Request for Advance Decision, B-186926, July 21, 1976, 76-2 CPD 66, and cases cited therein. Therefore, we find no impropriety in PJR's bid bond.

Burns also alleges that PJR's bid should be held to be nonresponsive because section 13(b) of the supplement to Standard Form 19-B, "Representations and Certifications," which was part of the solicitation was not completed by PJR. However, GSA correctly points out that under the applicable Federal Procurement Regulations in effect at the issuance of the IFB, 41 C.F.R. § 1-3.1203(3) (1977), these Cost Accounting Standards Representations and Certifications only apply to negotiated contracts and should not have been incorporated into the present advertised solicitation. Additionally, we have held that the failure to complete Standard Form 19-B does not render a bid nonresponsive, and, where such information is required by a solicitation, the information may be submitted after bid opening. L. Reese & Sons, Inc., B-182050, November 11, 1974, 74-2 CPD 255. Accordingly, the protest on this issue is denied.

Burns has also alleged several deficiencies in the bids of the third and fourth low bidders. However, in view of that fact that GSA proposes to award to PJR and because we have found PJR's bid to be responsive, discussion of these issues is academic and we will not consider them further.

The protest is denied.


Deputy Comptroller General
of the United States