



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Jennings International Corp.  
File: B-232956  
Date: November 10, 1988

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### DIGEST

Bidder's failure to sign a telecopied bid modification may not be waived as a minor informality where the only evidence in the modification of the bidder's intent to be bound is the corporate letterhead and no other document signed by the bidder accompanied the modification.

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### DECISION

Jennings International Corp. protests the rejection of its telecopied bid modification and the award of a contract to any other bidder under invitation for bids (IFB) No. DACA65-88-B-0062 issued by the United States Army Corps of Engineers for the construction of water and sewer facilities and a warehouse at Fort A.P. Hill, Virginia.

We deny the protest.

The IFB, as amended, specified that bids were to be received by 11 a.m. on September 27, 1988. According to the IFB bids could be modified or withdrawn by telegraphic notice received by the time specified for receipt of bids.

Jennings sent its original bid on September 26 by Federal Express. The bid was received by the agency at 9:57 a.m. on September 27. That same day, Jennings telecopied a three page modification of its bid which was received by the agency at 9:47 a.m. At 10:25 a.m. the Corps received a telephone call from an unidentified representative of Jennings who sought and obtained confirmation of the agency's receipt of the original bid and the modification.

Bids were to be evaluated on the basis of the base bid prices and two work additives if they were within available funding. Since funds were not available for the additives at bid opening, only the base bids were evaluated.

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Jennings' initial base bid was \$4,250,000 and its modified base bid was \$7,880,000. Jennings' base bid, both as originally submitted and as modified, was low. After bid opening, the contracting officer determined that Jennings' modification could not be accepted because it was not signed. Jennings protested the rejection of its modification prior to award, nevertheless, the Corps determined pursuant to 31 U.S.C. § 3553(c)(2) (Supp. IV 1986) that urgent and compelling circumstances significantly affecting the interests of the United States did not permit waiting for our decision and awarded the contract to the second low bidder.

The protester argues that its failure to sign the modification should be waived as a minor informality. Jennings states and the agency does not dispute that Jennings clearly identified the telecopy as a bid modification and included the solicitation number, the address of the contracting agency, the bidder's letterhead, the name and address of the bidder, the time specified for receipt of bids and the contract work description. Jennings contends that the manner of the bid modification and the fact that it confirmed receipt of the modification by the Corps prior to bid opening indicates its intent to be bound by the modified price and does not permit it to choose between the prices it submitted. Further, the protester points out that the IFB permitted the use of telegraphic bid modifications. The protester argues that since telegraphic bid modifications are not signed that its unsigned telecopied modification should be treated in the same manner. The protester does not argue that it should have received the award based on its initial base bid of \$4,250,000.

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. Southeast Crane and Monorail Systems, Inc., et al., B-227080.2 et al., Oct. 26, 1987, 87-2 CPD ¶ 392. 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 Electric 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. We believe that these rules apply to bid modifications as well as bids, since the

modification is, in essence, a new bid. See Barnes Electric Co., Inc., B-228651, Oct. 2, 1987, 87-2 CPD ¶ 331.

It is clear, we think, from the modification itself that it was indeed transmitted by the bidder and that it was to pertain to the subject bid. It was not, however, accompanied by any other signed documents--the signed bid was sent separately by Federal Express--and therefore Jennings' failure to sign the modification may not be waived as a minor informality. Further, we must agree with the agency that the validity of the protester's bid, as modified, is questionable without any signature on the modification, even though its initial bid was signed and it telephoned to confirm receipt, because without a signature on the modification the contracting officer could not conclude with certainty whether that modification was submitted by someone authorized to do so. See Canaveral Ship Repair, Inc., B-230630, May 20, 1988, 88-1 CPD ¶ 486.

We do not agree with the protester that the acceptance of telegraphic modifications, which do not include signatures, necessitates the acceptance of unsigned telecopied modifications. First, the acceptance of telegraphic modifications or withdrawals is an exception to the general rule which is specifically provided for by the regulations, FAR § 52.214-5(b), and announced in the solicitation. We are aware of no comparable provision regarding telecopied bid materials.<sup>1/</sup> Most important, however, it is not possible to transmit a signature by telegram. We are not aware of any technical impediment to transmitting a bid modification with the signature of the bidder's authorized agent through the use of a "fax" or telecopy machine, and the protester does not contend that there is any. In fact, the protester offers no explanation at all as to why the modification was not signed. Consequently, unless we are to hold that a bid modification simply does not have to be signed by the bidder's authorized agent--which we are not prepared to do--we see no basis to excuse the lack of a signature here because of the existence of a single specified exception, for telegraphic modifications, based on technical necessity.

Regarding Jennings' contention that in a prior solicitation issued by the same contracting office it telecopied a

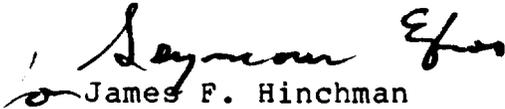
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<sup>1/</sup> A proposed amendment to the FAR currently under consideration provides for the facsimile transmission of bids and bid modifications, but signatures are required. 53 Fed. Reg. 30818, 30821-30822 (August 15, 1988).

similar modification which was found acceptable, improprieties in past procurements are not relevant to the acceptability of Jennings' modification in this case. Barnes Electric Co., Inc., B-228651, supra.

We therefore conclude that the agency acted properly in rejecting Jennings' bid modification.

The protest is denied.

  
James F. Hinchman  
General Counsel