



Comptroller General
of the United States
Washington, D.C. 20548

93236

Decision

Matter of: Johnny F. Smith Truck and Dragline Service, Inc.

File: B-252136

Date: June 3, 1993

Leonard W. Childs, Jr., Esq., for the protester.
Craig P. Schmauder, Esq., and Mary S. Byers, Esq.,
Department of the Army, for the agency.
Tania L. Calhoun, Esq., and Christine S. Melody, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

A bidder's failure to sign its bid may be waived as a minor informality when the bid is accompanied by a document bearing the bidder's signature, since the signature demonstrates the bidder's intent to be bound.

DECISION

Johnny F. Smith Truck and Dragline Service, Inc. protests the award of a contract to Silver Eagle, Ltd. under invitation for bids (IFB) No. DACW17-93-B-0041, issued by the U.S. Army Corps of Engineers, Jacksonville District, for the pickup and disposal of salvageable materials from debris piles generated as a result of the Hurricane Andrew recovery effort in Dade County, Florida.¹ The protester argues that Silver Eagle's bid should have been rejected as nonresponsive.

We deny the protest.

The IFB was issued on December 22, 1992, with a closing date of December 31; amendment No. 0001 was issued on December 28 to announce an optional site visit for prospective bidders. Thirteen bids were received and opened; Silver Eagle submitted the low bid of \$96,000, and the protester submitted the third-low bid of \$199,977.² After requesting

¹The solicitation was issued under the auspices of the Federal Emergency Management Agency.

²The second-low bid, for \$163,000, was rejected as nonresponsive.

and receiving a bid verification from Silver Eagle, and after confirming its corporate status with the state of its incorporation, the contracting officer determined Silver Eagle to be a responsive, responsible bidder and awarded it the contract on January 7, 1993. On January 8, Smith filed an agency-level protest of the award, arguing that various discrepancies in Silver Eagle's bid should have led the agency to reject it as nonresponsive. The agency denied the protest on January 20; this protest followed. The agency subsequently issued a notice to proceed with performance.

All of Silver Eagle's bid documents were submitted in a sealed envelope with the solicitation number written on its front. The bid documents included the standard form (SF) 33, "Solicitation, Offer, and Award." This form was blank; the name of the offeror did not appear, amendment No. 0001 was not acknowledged, and the form was not signed. Section K of the IFB required bidders to complete certain representations and certifications. Section K.6 of Silver Eagle's bid, the Certificate of Procurement Integrity (CPI), contained the signature of William C. Starr on the line to be signed by the officer or employee responsible for the bid. Section K.10 of the form, the Certificate of Authority to Bind the Corporation (CABC), also contained the signature of William C. Starr, and Silver Eagle's corporate seal was affixed. Finally, in section K.14 of the form, Silver Eagle extended the bid acceptance period to 60 calendar days with a hand-printed entry. The agency concluded, based on a review of these documents, that there was sufficient evidence of Silver Eagle's intent to be bound by the bid and thus that the bid was responsive.³

Smith argues that Silver Eagle's bid should have been rejected as nonresponsive because Silver Eagle failed to sign its bid.⁴ Smith asserts that the signatures contained

³Pursuant to Federal Acquisition Regulation (FAR) § 14.405(c), the contracting officer allowed Silver Eagle to sign its bid after bid opening, on January 5. The bidder was also allowed to fill in the remainder of its representations and certifications.

⁴In its initial protest, Smith complained that Silver Eagle's failure to acknowledge amendment No. 0001 rendered its bid nonresponsive. The agency in its report responded to this issue, and Smith in its comments did not rebut the agency's response. We consider this issue to be abandoned. See TM Sys., Inc., B-228220, Dec. 10, 1987, 87-2 CPD ¶ 573.

in Silver Eagle's CPI and CABC do not demonstrate its intent to be bound because both of those certifications were improperly completed. The agency contends that Silver Eagle adequately demonstrated an intent to be bound by including the signed CPI and the signed CABC in the bid envelope; additionally, the bidder explicitly filled in its bid acceptance period.

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. JRW Enters., Inc., B-238236, May 11, 1990, 90-1 CPD ¶ 464. 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 by referring to and identifying the bid itself. FAR § 14.405(c)(1); Wilton Corp., 64 Comp. Gen. 233 (1985), 85-1 CPD ¶ 128.

In our view, the signed representations and certifications form, which was included in the bid envelope as part of the unsigned bid, sufficiently demonstrated Silver Eagle's intent to be bound by its bid, and accordingly permits its acceptance. FAR § 14.405(c)(1); JRW Enters., Inc., *supra*. We view a bidder's signature as the prime consideration for determining the bidder's intent to be bound; the fact that the signature appears in other than the usual location does not mean that the bidder is any less committed to the provisions of the solicitation. See, e.g., Wilton Corp., *supra* (where an unsigned bid was accepted because it accompanied a signed amendment); Micon Corp., B-249231, Oct. 28, 1992, 92-2 CPD ¶ 293 (where an unsigned bid was accepted because it accompanied a properly executed bid bond). In fact, a signed CPI is sufficient to show a bidder's intent to be bound by its bid. JRW Enters., Inc., *supra*.

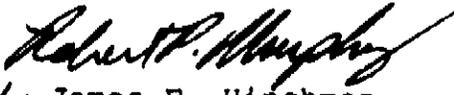
Silver Eagle's CPI contained the signature of William C. Starr on the line reserved for the signature of the officer or employee responsible for the offer, and the word "NONE" was hand-written on the line for the reporting of violations of the Office of Federal Procurement Policy (OFPP) Act.³ The remainder of the CPI was blank. Smith argues that these

³The CPI requirement implements several provisions of the OFPP Act, 41 U.S.C. § 423 (1988 and Supp. III 1991). The OFPP Act prohibits activities involving soliciting or discussing post-government employment, offering or accepting a gratuity, and soliciting or disclosing proprietary or source selection information.

omissions prevent the agency from properly relying on the CPI's signature to determine the bidder's intent to be bound to its bid. We disagree.

As noted above, both the CPI and the CABC were signed by an authorized representative of Silver Eagle; thus, even without regard to the agency's reliance on the signature in the CPI, the awardee's signature on the CABC by itself is sufficient evidence of its commitment to the bid.⁶ In any event, we think the signed CPI is sufficient to show Silver Eagle's intent to be bound to its bid. The signed CPI was submitted to the agency on pages K-3 through K-5 of the bid package; all of the bid documents were contained in a sealed envelope with the solicitation number written on its front. These circumstances are sufficient to clearly identify the signature on the CPI with this particular IFB notwithstanding the CPI's remaining omissions.⁷

The protest is denied.


for James F. Hinchman
General Counsel

⁶To the extent Smith argues that errors contained in the CABC rendered Silver Eagle's bid nonresponsive, we note that completion of such a certification concerns a matter of responsibility which may be corrected any time before contract award. Nomura Enters. Inc.--Recon., B-244993.2; B-245521.2, Oct. 9, 1991, 91-2 CPD ¶ 322.

⁷For the same reasons, the omissions in the CPI did not render Silver Eagle's bid nonresponsive on the basis of the CPI itself. Various omissions in a CPI are waivable as long as the certificate is sufficiently identified with the particular IFB. See, e.g., Woodington Corp., B-244579.2, Oct. 29, 1991, 91-2 CPD ¶ 393.