

BEFORE THE
MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeal of Apollo Paving Company, Inc.)

Under Toll Facilities Administration)
Contract No. BRB 8-777)

) Docket No. MSBCA 1092

October 26, 1982

Signing of Bids - The authorized signature of a bidder on the bid form is mandatory since it establishes the intent of the bidder to be bound and hence, the responsiveness of the bid.

Signing of Bids - The failure to sign a bid may be waived as a minor informality pursuant to COMAR 21.06.02.03 if the bid is accompanied by other material clearly indicating the bidder's intent to be bound.

APPEARANCE FOR APPELLANT:

Charles J. Karfonta, President
Apollo Paving Company, Inc.
Baltimore, MD

APPEARANCE FOR RESPONDENT:

Steven Vanderbosch
Assistant Attorney General
Baltimore, MD

OPINION BY MR. LEVY

This appeal is taken from a Maryland Transportation Authority Toll Facilities Administration (TFA) procurement officer's final decision declaring Appellant's bid nonresponsive because the bid sheet had not been signed. Appellant contends that this omission was a minor technicality which it should have been allowed to cure, or, in the alternative, the procurement officer should have waived.

Findings of Fact

1. On April 30, 1982, TFA issued Request for Quotation (RFQ) No. BRB 8-777 for Placement of Bitumious Curb and Rip/Rap on the West-bound Approach, William Preston Lane, Jr. Memorial Bridge. Bids were due May 25, 1982.

2. Of the four bids received, Appellant's was the lowest. However, Appellant's bid was noted as being "irregular" at the bid opening since the enclosed bid sheet had neither been signed nor sealed.

3. Appellant's bid package consisted of the 20 page form included at pages 79 through 99 of the RFQ. Page 86 of the RFQ, the bid signature sheet, contained the following instruction: "The bidder is hereby notified that this sheet must be signed in order for the bid to be accepted." In executing this sheet, Appellant wrote the name "Apollo Paving Company, Inc." without including the signature of an officer authorized to bind the company.

4. Pages 89 & 90 of the RFQ, the Minority Business Affirmative Action Certification, were completed and signed by Appellant's President. On these pages the project number was printed and on page 90 the following appeared: "I acknowledge that this certification is to be made an integral part of the proposal form for the above named project."

5. Pages 91 through 94 of the RFQ constituted the Anti-Bribery, Non-Collusion and Financial Disclosure Affidavit. The project number was printed at the top of page 91 and all blanks were filled in by Appellant. Appellant's President signed the affidavit on page 93 and his signature was verified by a notary public on page 94.

6. The bid security forms were not required to be separately executed since Appellant's bid was below \$25,000.

7. The procurement officer notified Appellant by telephone on May 28, 1982 and then by letter dated June 3, 1982 that its bid was nonresponsive.

8. Appellant filed a protest with the procurement officer by letter dated May 28, 1982 and subsequently appealed to the Toll Facilities Administrator by letter dated June 7, 1982.

9. By letter of June 28, 1982 the procurement officer issued his final determination that Appellant was nonresponsive for its failure to sign and seal the bid signature sheet. It is from this decision that Appellant filed a timely appeal with this Board on July 12, 1982.

Decision

This appeal raises for our consideration the issue of the effect of an unsigned bid form and how it should be treated. In this regard, COMAR 21.05.02.03 A & B, "Bidder Submissions", provides that:

A. Bid Form. A form shall be provided on which the bidder shall state the price, sign and submit along with all other necessary submissions.

B. Bid Content.

(1) Bids shall be based upon the specifications contained in the invitation for bids.

(2) Bids shall be typewritten or written legibly in ink.

(3) All erasures or alterations shall be initialed by the signer in ink.

(4) All bids shall be signed in ink.

(5) The bid shall be submitted in an envelope which clearly indicates that it contains a bid. (Underscoring added.)

The TFA procurement officer concluded, based on the foregoing, that a signature on the bid form was mandatory and could not be waived.

The requirement that a bid be signed historically has been treated as a matter of substance and not one of form. The reason, of course, is that without the signature of an authorized representative of the bidder's organization, the bid would not constitute necessarily a binding offer to perform the work described in the invitation. The low bidder, under such circumstances, would have the opportunity to withdraw his bid after reviewing his competitors' prices, thus obtaining the proverbial "two bites of the apple." Such a system obviously would be extremely unfair and ultimately would subvert the integrity of the competitive bid procedure. For this reason, therefore, the authorized signature of a bidder is considered mandatory to establish both the intent of that bidder to be bound and the responsiveness of his bid. Compare Comp. Gen. Dec. B-192979, 79-1 CPD ¶ 65 (1979); Comp. Gen. Dec. B-123061, 34 Comp. Gen. 439 (1955).

In the instant appeal, Appellant concededly did not sign its bid form. However, Appellant did properly execute a number of other documents contained in the bid package. The ultimate issue to be resolved concerns whether these other documents properly may be used to satisfy the mandatory bid signature requirement.

The Comptroller General has held in a long line of opinions that unsigned bids accompanied by other material indicating the bidder's intention to be bound were acceptable to establish responsiveness. See, for example, Comp. Gen. Dec. B-200242, 80-2 CPD ¶ 241; Comp. Gen. Dec. B-195535, 79-2 CPD ¶ 123; Comp. Gen. Dec. B-172161, (August 20, 1971) Unpublished (unauthorized signature on bid accompanied by authorized signature on supporting affidavit); Comp. Gen. Dec. B-166190, 48 Comp Gen. 648 (1969) (unsigned bid accompanied by signature on the sealed envelope by president plus personal delivery by president); Comp. Gen. Dec. B-169594 (October 27, 1970), Unpublished, 13 G.C. ¶ 8 (unsigned bid accompanied by signed amendments acknowledgment); Comp. Gen. Dec. B-155049 (August 31, 1964), Unpublished (unsigned bid accompanied by executed equal employment

opportunity representation). These opinions all were based on an application of either Federal Procurement Regulation § 1-2.405(c) or Armed Services Procurement Regulations 2-405(iii)(B)¹.

The comparable Maryland regulation that deals with minor irregularities in bids is found at COMAR 21.06.02.03 as follows:

A minor irregularity is one which is merely a matter of form and not of substance or pertains to some immaterial or inconsequential defect or variation of a bid or proposal from the exact requirement of the

¹ASPR 2-405(iii)(B) provided that:

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, and no effect on 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, bidder. 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;

solicitation, the correction of [sic] waiver of which would not be prejudicial to other bidders or offerors. The defect or variation in the bid or proposal is immaterial and inconsequential when its significance as to price, quantity, quality, or delivery is trivial or negligible when contrasted with the total cost or scope of the supplies or services being procured. The procurement officer shall either give the bidder or offeror an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or proposal or waive the deficiency, whichever is to the advantage of the State.

A comparison of the foregoing regulation with FPR § 1-2.405(c) or ASPR 2-405(iii)(B) establishes that the Maryland definition of a "minor informality" was adopted from the Federal regulations.² The only difference between the Maryland and Federal regulations is that the promulgators of Maryland's procurement regulations did not elect to provide specific examples of minor irregularities as was done in the Federal system. The absence in the Maryland regulation of specific examples of minor irregularities, however, does not alter the substantive meaning of that term as it has evolved in the Federal system³ since such examples are merely illustrative of the way the regulation should be applied. We therefore hold that pursuant to COMAR 21.06.02.03 the failure to sign a bid in Maryland likewise may be waived as a minor informality if the bid is accompanied by other material clearly indicating the bidder's intent to be bound.

Appellant's bid package contained two documents that were signed by Appellant's President, the Minority Business Affirmative Action (MBE) certification and the Anti-Bribery, Non-Collusion and Financial Disclosure Affidavit. Both were a part of the standard bid form found in the RFQ and specifically referenced RFQ BRB-8-777. The MBE certification provided that it was to be made an integral part of the proposal form and the Anti-Bribery affidavit contained a representation that Appellant's President was familiar with the preparation of the bid on the instant solicitation. We conclude that the voluntary submission of this bid together with these executed documents would have been sufficient to overcome any attempt by Appellant to disavow the bid and to upset any award made to it on the ground that the bid lacked an authorized signature. Accordingly, these executed documents were

²The preface to Preliminary Working Draft #1 of the Maryland Procurement Regulations (October 20, 1980), further provides that "The source of the material to be used in Draft #1 will be derived from:(5) The American Bar Association's Model Procurement Implementing Regulations and (7) [sic] the Federal Procurement Regulations."

³The Federal regulations in fact were developed as a result of earlier decisions of the Comptroller General permitting other documents to be used to establish the intention of the bidder to be bound. See Comp. Gen. B-130203, 36 Comp. Gen. 523 (1957) (unsigned bid accompanied by a signed bid bond) and Comp. Gen. A-90314, 17 Comp. Gen. 497 (1937) (unsigned bid accompanied by signed bid bond.) Also see 48 Comp. Gen. at page 650.

sufficient to bind Appellant even though the bid sheet was not signed. Compare Comp. Gen. B-172161, (August 20, 1971), Unpublished and Comp. Gen. B-155049, (August 31, 1964), Unpublished.

For the foregoing reasons, therefore, the Appeal of Apollo Paving Company, Inc. is sustained. Although the Board was apprised at the hearing in this appeal that a contract was awarded to another contractor, the record is devoid of evidence concerning the completion status of that work. In the event that said contract is presently both substantially unperformed and/or severable, it should be terminated for convenience and awarded to Appellant, provided that Appellant otherwise is responsible.