



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Carter Construction Company, Inc.

File: B-272109

Date: June 28, 1996

George E. Pike, Jr., Esq., Hoffman & Pike, for the protester.

Roger L. Pentzien, Pentzien Inc., an intervenor.

Lester Edelman, Esq., Department of the Army, for the agency.

Wm. David Hasfurther, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly rejected as nonresponsive a bid accompanied by a bid bond in which the monetary amounts set out for the penal sum of the bond and the liability limit of the surety resulted from alterations to the original amounts set out in the bond and the bid or documents submitted with the bid did not establish whether the surety was bound by these altered amounts.

DECISION

Carter Construction Company, Inc. protests the rejection of its bid under invitation for bids (IFB) No. DACW66-96-B-0027, issued by the U.S. Army Corps of Engineers for the lease of a cutterhead hydraulic pipeline dredge to be fully operated with attendant plant and snagging equipment. The bid was rejected as nonresponsive after the agency determined Carter's bid bond to be defective. The agency intends to award to Pentzien, Inc., the second low bidder.

We deny the protest.

The IFB, issued on April 10, 1996, required bidders to submit prices for a hydraulic dredge with an 18-inch pump discharge and for a hydraulic dredge with a 20-inch pump discharge. Award would be made for only one of the dredges. Bidders were also to submit with their bids a bid bond or other suitable bid guarantee in the lesser amount of 20 percent of the bid price or \$3,000,000. Bids were opened on May 14. Carter, the low bidder at \$1,322,252, submitted a Standard Form 24 bid bond in the amount of 20 percent of its bid price, not to exceed \$300,000. The bond was signed by the President of Carter and by the attorney-in-fact of the corporate

surety. The bid included a power of attorney from the surety giving its attorney-in-fact the right to obligate the surety on the bid bond. In examining the bid bond, the agency concluded that the two typed figures of \$300,000 on the bond, inserted first as the penal sum of the bond and then as the liability limit of the surety, were alterations of prior typed figures. Also, the bond amount ("\$300,000") and the contract amount ("\$1,500,000.00 est.") on the power of attorney were alterations of prior typed figures. There were no initials adjacent to these altered amounts on the face of the bid bond or power of attorney. The agency concluded that the surety could not be bound by the terms of the bond due to these alterations, and Carter's bid was rejected.

Carter contends that its bid bond is in total conformance with the IFB bond requirement and that its bid therefore should not have been rejected. Carter explains that after the attorney-in-fact inserted in the dollar amounts on the two documents, Carter requested that they be increased. Carter further explains that the attorney-in-fact, using the same typewriter she used to type the original figures, "lifted out" the previous numbers and inserted the new numbers. Thus, the attorney-in-fact had no need to initial the documents since she made the changes herself. Carter believes that if the agency had any doubt as to the willingness of the surety to be bound by the figures in the bond, it should have simply called the surety to confirm the validity of the bond. According to Carter, this confirmation of the validity of the bond would not have constituted an after the fact "curing" of the bond since the confirmation does not change the bond.

We think that Carter's bid was properly found to be nonresponsive. The failure of a bidder to present an adequate bid guarantee at the time of bid opening renders the bid nonresponsive. Tri-Tech Int'l, Inc., B-244289, June 13, 1991, 91-1 CPD ¶ 569. Thus, a surety's obligation must be objectively discernable from the bidding documents so that the extent and character of its liability is clearly ascertainable. Allen County Builders Supply, 64 Comp. Gen. 505 (1985), 85-1 CPD ¶ 507. Alteration of the penal amount of a bid bond, without evidence in the bid documents or the bond itself that the surety had consented to the alteration, renders the bond defective and, therefore, nonresponsive. Hugo Key & Son, Inc.; Alco Env'tl. Servs., Inc., B-251053.4; B-251053.5, July 15, 1993, 93-2 CPD ¶ 21; HR Gen. Maintenance Corp., B-260404, May 16, 1995, 95-1 CPD ¶ 247. The record shows that the monetary amounts for the penal sum of the bond and the liability limit of the surety in Carter's bond were alterations of undeterminable original figures. There is nothing in the bid documents or the bond itself to show that the surety consented to the alterations. Thus, the bond is defective.

The surety's assurance that it would honor the altered bid bond has no effect on the agency's determination that its bid bond was defective, because a material defect in a bid bond cannot be explained or affirmed after bid opening. To permit this would place the surety in a position to disavow its obligation, thus compromising the

integrity of the sealed bidding system by permitting the bidder to decide after bid opening whether or not to make its bid acceptable. Southland Constr. Co., B-196297, Mar. 14, 1980, 80-1 CPD ¶ 199.

The protest is denied.¹

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¹In its comments on the agency report, dated June 6, Carter argues that Pentzien cannot supply the dredge, "Jolly Rogers," which Pentzien listed in its bid, and that the dredge has a pump discharge of 18 inches in diameter, not the 20-inch diameter Pentzien claimed in its bid. This protest of Pentzien's bid is untimely. Where, as here, bids are opened publicly, protesters are required to diligently review the bids shortly after bid opening. This supplemental protest challenge to Pentzien's bid made in the protester's comments received on June 10, 27 days after bid opening, is untimely. 4 C.F.R. § 21.2(a)(2) (1996); NVT Technologies, Inc., B-256072; B-256072.2, May 6, 1994, 94-1 CPD ¶ 297; General Elevator Co., Inc.,--Recon., B-250289.2, Feb. 16, 1993, 93-1 CPD ¶ 139.