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Burton
Proc II

DECISION



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

[Protest of Bid Rejection as Nonresponsive]

FILE: B-203020

DATE: May 12, 1981

MATTER OF: Zemark International Construction Co.

DIGEST:

Bid is nonresponsive and not for consideration when bidder's corporate surety is not listed in Treasury Department Circular 570 and deficiency may not be cured after bid opening by substitution of bond from listed surety.

Zemark International Construction Company (Zemark) protests the rejection of its bid as nonresponsive under invitation for bids No. DACW 17-81-B-0024 issued by the U.S. Army Corps of Engineers.

Zemark contends that the procuring agency may consider its bid for award notwithstanding that the corporate surety on its bid bond was not listed in Treasury Department Circular 570, entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies." Zemark states it is now "ready, willing and able to tender a corporate surety from the approved list."

This Office has consistently held that where a bid guarantee is required as part of a bid, the failure to provide a guarantee will render the bid nonresponsive. 38 Comp. Gen. 532 (1959); 46 Comp. Gen. 11 (1966). That failure cannot be waived or excused unless one of the exceptions in Federal Procurement Regulations (FPR) § 1-10.103-4 (1964 ed. amend. 200) is present. Those exceptions are very narrow, and none applies here.

Here the protester has furnished an inadequate guarantee because the surety is not listed in Circular 570.

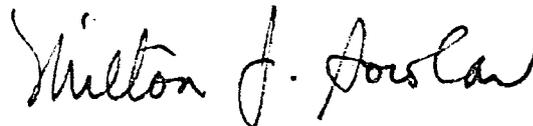
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This renders the bid nonresponsive. See Ron Grove's Heating, Air Conditioning, and Piping, Inc., B-198687, May 23, 1980, 80-1 CPD 360, and cases cited therein. Moreover, Zemark's offer to submit, after bid opening, a bid from an approved surety may not be accepted because a bidder may not make an otherwise nonresponsive bid responsive after bid opening. See S.T.C. Construction Company, B-194980, July 27, 1979, 79-2 CPD 60.

It is clear from Zemark's submission that its protest is without legal merit and, therefore, we have not obtained an agency report before reaching our decision. Klean-Vu-Maintenance, Inc., B-194054, February 22, 1979, 79-1 CPD 126, nor have we honored Zemark's request for a conference regarding its protest since no useful purpose would be served thereby. See Die Mesh Corporation, 55 Comp. Gen. 111 (1978), 78-2 CPD 374.

The protest is summarily denied.



Acting Comptroller General
of the United States