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DECISION



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

FILE: B-203261

DATE: October 26, 1981

MATTER OF: Jack B. Imperiale Fence Co., Inc.

DIGEST:

1. Where bidder is identified in bid bond and bid documents by three different corporate names, agency may consider documents submitted after bid opening which existed and were available prior to bid opening to determine responsiveness of bid by establishing that different entities named in bid and bid bond are actually same firm.
2. Although bidder is identified in bond and bid documents by three different corporate names, discrepancies are matters of form which do not affect identity of firm where evidence submitted after bid opening and prior to award establishes sameness of entities named in bid and bid bond.

Jack B. Imperiale Fence Co., Inc. protests the rejection of its bid under invitation for bids (IFB) DABT 35-81-B-0044 issued by the Department of the Army, Contracting Division, Fort Dix, New Jersey, for replacing chain link fences and gates.

The bid and bid bond submitted by the protester identified the bidder by three different corporate names. The protester's name appeared as "Imperial Fence Co., Inc." on its bid and on both bid amendments. The corporate seal affixed to the solicitation's "Certificate of a Corporation" was in the name of "Jack B. Imperiale Fence Co., Inc." However, the principal named in the bid bond was "J.B. Imperiale Fence Co., Inc."

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The protester was the apparent low bidder when bids were opened on March 19, 1981. On April 15, the protester was informed of the discrepancies between the bid bond and bid documents. The protester indicated that it had inadvertently inserted its advertising name ("Imperial Fence Co., Inc.") as opposed to its legal name ("Jack B. Imperiale Fence Co., Inc.") and that the corporate seal reflected its legal name which also appeared on the bond.

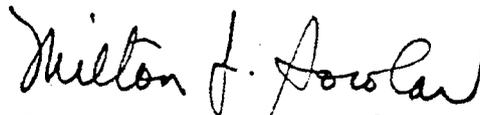
However, the bid was considered legally insufficient when the agency found that the principal's name on the bid documents was not identical to the named bidder on the bid bond. An Army investigation revealed that according to the State of New York, Department of Corporations, both "Jack B. Imperiale Fence Co., Inc." and "Imperial Fence Co., Inc." were separate active corporations incorporated under the laws of New York, while "J.B. Imperiale Fence Co., Inc." was neither an active nor inactive corporation licensed by the state. By a letter dated April 28, the Army informed the protester that its bid was nonresponsive for failure to provide a bid bond and because the presence of three corporate names on the bid and the bond precluded identification of the actual bidder.

The protester argues that its bid was responsive because the three names used in the bid documents and bond referred to the same legal entity. We agree. Although there are various forms of the protester's corporate name in the bid documents and bid bond, we believe these discrepancies are matters of form which do not affect the identity of this firm or the liability of the surety to the Government if the bidder were to refuse the award documents. In this regard, we have recognized that the names on the bid and the bid bond need not be exactly the same so long as it can be established that the differently identified entities are actually the same. K-W Construction, Inc., B-194480, June 29, 1979, 79-1 CPD 475.

The record establishes that subsequent to the bid opening and prior to award the protester has attempted to show that the principal named in the bid bond is the same entity identified in the bid. In this regard, the record contains copies of the bidder's official documents: tax forms, bid bonds, insurance papers, loan documents and contract documents in support of its position. We note that these documents existed and were available at the time of bid opening and such evidence may be submitted after bid opening and prior to award to establish the sameness of the entities named in the bid and bid bond. K-W Construction, Inc., supra. These documents show that the protester has used different names interchangeably and, on the bid bond submitted, it appears that the surety was clearly obligated on behalf of the entity that submitted the bid.

The record provides no basis for concluding there was any affiliation between the protester and another firm, "Imperial Fence Co." located in Buffalo, New York, whose existence was discovered by the Army during the course of this protest. The protester states that it has for years used the name "Imperial Fence Co." as an advertising name for its firm. It has provided us with numerous advertisements from telephone books and on business cards, etc. showing the use of that name. Since the bid included the name of Mr. Imperiale as the owner and his corporate address in the New York City area, and the bid bond contained the same address, we do not agree with the Army that the use of the name "Imperial Fence Co." on the bid could be confused with the other firm owned by a different individual and located hundreds of miles away in Buffalo. Additionally, we note the Buffalo firm did not participate in the procurement.

Consequently, we sustain the protest and we are recommending to the Secretary of the Army that the protester's bid be considered for award if it is otherwise responsive and the bidder is determined to be responsible.



Acting Comptroller General
of the United States