

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

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**FILE:** B-208332**DATE:** January 19, 1983**MATTER OF:** Atlas Contractors, Inc./Norman T. Hardee,  
a Joint Venture**DIGEST:**

Protester's bid accompanied by bid bond in name of joint venture consisting of protesting corporation and protester as an individual must be rejected even though individual signed the bid both as an officer of the corporation and a partner since all other parts of bid indicated that only corporation was the bidder and the presence of the two signatures on the bid at best made the bidder's identity ambiguous.

Atlas Contractors, Inc./Norman T. Hardee, a Joint Venture, protests the award of a contract to any other bidder under invitation for bids (IFB) No. DACA87-82-B-0040 issued by the Army Corps of Engineers for the construction of various facilities at the Mississippi Army Ammunition Plant, Bay St. Louis, Mississippi. The contracting officer determined that Atlas' bid was nonresponsive, since there was a discrepancy between the legal entity shown on the bid and the legal entity shown on the bid bond. For the reasons discussed below, we deny the protest.

The IFB required a bid guarantee in the form of a bid bond with "good and sufficient" surety acceptable to the Government. The solicitation further provided that failure to furnish a bid guarantee in the proper form and amount, by the time set for opening of bids, might be cause for rejection of a bid.

Atlas was the low bidder at the July 8, 1982 bid opening. The signature block on Atlas' bid appeared as follows:

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B-208332

Name of Bidder Atlas Contractors, Inc.	Full Name of All Partners (Signature in Ink) Norman T. Hardee
Business Address: 1701 West Freeway Fort Worth, Texas 76102	
By: (Signature in Ink) Norman T. Hardee	
Title: President	

"Atlas Contractors, Inc." was also named as the bidder in blocks appearing on pages 1 and 5 of the solicitation and on the front of the envelope in which Atlas submitted its bid. In addition, on SF19-B, "Representations and Certifications," under "Type of Organization," Atlas checked the box beside the word "corporation" rather than the box beside "joint venture."

The bid bond, which referenced the IFB number, identified its principal as "Atlas Contractors, Inc., and Norman T. Hardee, an Individual." In the signature blocks for the principal appeared the signature of "Norman T. Hardee" as president of Atlas Contractors, Inc. and also as an individual. Further, the words "joint venture" were checked in a space entitled "Type of Organization" appearing in the upper right corner of the face of the bid bond.

By letter dated July 15, the contracting officer informed Atlas that its bid was being rejected as nonresponsive because of the discrepancy between the bidder and the principal shown on the bid bond. Award was made on July 16 to Roy Anderson, Jr., Inc. in the amount of \$1,968,204. Atlas' bid was \$1,943,000.

Atlas contends that the rejection of its bid by the contracting officer was improper since both the bid and the bid bond indicate an intention on its part to perform the work as a joint venture. Atlas notes that two signatures appear on the bid, namely, "Norman T. Hardee" as president of Atlas Contractors, Inc. and as an individual under a separate heading entitled "Full Name of All Partners." Atlas further maintains that the second signature on the bid bond was clearly by "Norman T. Hardee" in his individual capacity since it appears without any title or

corporate affiliation and that therefore it is "illogical" to attach no significance to the presence of the second signature. Rather, Atlas asserts that, by his second signature, "Norman T. Hardee" was naming himself, in his individual capacity, as the partner of Atlas Contractors, Inc. in a joint venture for purposes of this solicitation. According to Atlas, the indication in the bid that a joint venture was intended is reinforced by the principals named in the bid bond.

Bid bond requirements are a material part of the IFB which the contracting officer cannot waive. See 52 Comp. Gen. 223 (1972); 50 Comp. Gen. 530 (1971). Thus, a bid bond which names a principal different from the nominal bidder is deficient and the defect may not be waived as a minor informality. A. D. Roe Company, Inc., 54 Comp. Gen. 271 (1974), 74-2 CPD 194. This rule is prompted by the rule of suretyship that no one incurs a liability to pay the debts or perform the duty of another unless he expressly agrees to be bound. See Hoyer Construction Company/K. D. Hoyer, a Joint Venture, B-183096, March 18, 1975, 75-1 CPD 163.

The agency argues that Atlas' bid as submitted is, at best, ambiguous and confusing as to the real party in interest. While we have found bids responsive where the bid bond named different principals in cases where we were able to conclude from the bid itself that the intended bidder was the same legal entity as the named principal on the bid bond, see Hoyer Construction Company/K. D. Hoyer, a Joint Venture, supra, such a finding is not possible here. To find the bid responsive, the agency would have to make the following assumptions: (1) that the protester's characterization of itself as a single entity rather than a joint venture in the blanks provided in the solicitation for "name of bidder" on pages 1 and 5 of the IFB as well as on the front of its envelope was a mistake; (2) that protester's representation of itself on SF19-B under "Type of Organization" as a Texas corporation and not a joint venture was also a mistake; (3) that the signature "Norman T. Hardee" appearing in the space provided for "Full Name of all Partners" indicated that "Atlas Contractors, Inc.," the nominal bidder in the signature block, signed the bid not for itself as a corporation but as an authorized partner in the joint venture of "Atlas Contractors, Inc." and "Norman T. Hardee"; and (4) that this joint venture was the real party in interest to the solicitation. Thus, the

B-208332

bid is at best ambiguous as to the real bidding party. Since it was not clear from the bid package that the joint venture was both the principal on the bid and the bid bond, the bid could properly be rejected. We do not think that a contracting officer is obligated to interpret an inartfully prepared bid, by sequential logical deductions and inferences, to make it responsive.

The protest is denied.

*for*   
Comptroller General  
of the United States