

DECISION

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

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FILE: B-213414

DATE: November 15, 1983

MATTER OF: Summit Metal Fabricating, Inc.

DIGEST:

1. Rejection of bid as nonresponsive for failing to furnish bid bond is proper since statement in bid bond requirement that failure to comply "may be cause for rejection" is just as compelling and material as if more positive language were employed.
2. GAO does not consider protests regarding affirmative determinations of responsibility unless there is a showing of fraud or it is alleged that definitive responsibility criteria set forth in the solicitation were not properly applied by the agency.

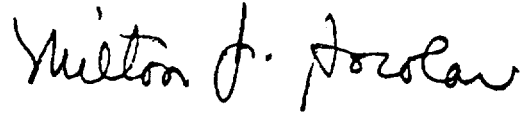
Summit Metal Fabricating, Inc. (Summit), protests award of a contract under invitation for bids No. F33601-83-R0088 for construction of a fan tower and wind tunnel at Wright-Patterson Air Force Base, Ohio, to Butt and Head, Inc. (Butt and Head). Summit admits that it did not include a bid bond with its proposal, but argues the solicitation only stated that failure to include a bond "may be cause for rejection." Summit also contends that Butt and Head is not qualified to fabricate and construct the facilities.

We summarily deny in part and dismiss in part the protest.

Our Office has held that the failure to furnish a bid bond in accordance with the requirements of the invitation requires the rejection of the bid as nonresponsive. We have held that the statement in the bid bond requirement that failure to comply "may be cause for rejection" is just as compelling and material as if more positive language were employed. See Consolidated Installations Corp., B-202630, April 20, 1981, 81-1 CPD 301. Further, the fact that Summit submitted a letter from its surety, stating that due to time constraints a bond could not be issued, does not fulfill the LFB requirement. See Burns Electronic Security Services, Inc., B-191312, November 27, 1978, 79-1 CPD 1. Therefore, Summit's bid was properly rejected as nonresponsive.

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The second allegation constitutes a challenge to the contracting officer's affirmative determination of responsibility as evidenced by award of the contract to Butt and Head. Our Office does not consider protests regarding affirmative determinations of responsibility unless there is a showing of fraud or it is alleged that definitive responsibility criteria set forth in the solicitation were not properly applied by the agency. Cardinal Moving & Storage Inc., B-209915, December 22, 1982, 83-1 CPD 2. Neither is the case here.



Acting Comptroller General
of the United States