

3/13/85

DECISION



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

31370

FILE: B-218627 **DATE:** June 5, 1985
MATTER OF: Opine Construction

DIGEST:

Where a bid is submitted in the name of one firm and is accompanied by a bid bond in the name of a joint venture consisting of the bidder and another entity, the bid bond is materially deficient, as the obligation of the surety is unclear. Therefore the bid must be rejected as nonresponsive.

Opine Construction protests the rejection of its low bid under invitation for bids (IFB) No. SCS-2-OR-85, issued by the Department of Agriculture, Soil Conservation Service, for the construction of a pipeline. Agriculture determined that Opine's bid was nonresponsive because there was a discrepancy between the legal entity shown on the bid and the legal entity shown on the bid bond. We dismiss the protest.

On the standard bid form, SF1442, Opine Construction was identified as the bidder, and the bid was signed by Boyd Ables, owner of Opine. The bid bond, however, which referenced the IFB number, identified its principal as "Opine Construction & A&A Properties, A Joint Venture." The bid bond was signed by the respective owners of these two firms, Boyd Ables and Larry Ables. Additionally, in the space entitled Type of Organization in the upper right corner of the bid bond, "Joint Venture" was checked.

By letter dated May 9, 1985, the contracting officer notified Opine that its bid was being rejected as nonresponsive because of the discrepancy between the bidder and the principal shown on the bid bond.

Bid bond requirements are a material part of an IFB that the contracting officer cannot waive. See 52 Comp. Gen. 223 (1972); Atlas Contractors, Inc./Norman T. Hardee, a Joint Venture, B-208332, Jan. 19, 1983, 83-1 CPD ¶ 69. Thus, a bid bond which names a principal different from the nominal bidder is deficient and the defect may not be waived

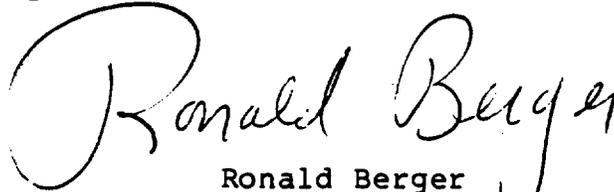
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as a minor informality. A.D. Roe Co., Inc., 54 Comp. Gen. 271 (1974), 74-2 CPD ¶ 194. For example, our Office has previously found bids nonresponsive which named a corporation in the bid and a joint venture in the bid bond. See Future Electric Co., B-212938, Feb. 22, 1984, 84-1 CPD ¶ 216.

Opine argues that this case is distinguishable because Larry Ables, owner of A&A Properties, was only added to the bid bond for extra security.

We disagree. The rule that a bid must be found nonresponsive where the nominal bidder is different from the principal named on the bid bond is prompted by the law 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. Moreover, a surety under a bond in the name of more than one principal is not liable for the default of one of them. A.D. Roe Co., Inc., *supra*. For this reason, we rigidly apply the rule that the principal listed on the bid bond must be the same as the nominal bidder. See, e.g., Andersen Construction Co., et al., 63 Comp. Gen. 248 (1984), 84-1 CPD ¶ 279 (holding that a bid bond is materially deficient and therefore must be rejected as nonresponsive where the bid is submitted in the name of a corporation but the bid bond is in the name of a joint venture consisting of the corporation and its president in his individual capacity). Therefore, the fact that Opine allegedly only included A&A Properties on the bid bond for extra security is irrelevant.

We dismiss the protest.



Ronald Berger
Deputy Associate
General Counsel