



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Fletcher & Sons, Inc.
File: B-224233.2
Date: October 30, 1986

DIGEST

1. General Accounting Office will not look to state law to determine the validity of a bid bond submitted for a federal procurement.
2. Protester's bid is properly rejected as nonresponsive where bid bond submitted with the bid does not identify the solicitation or the work to be performed.

DECISION

Fletcher & Sons, Inc., protests the rejection of its low bid under invitation for bids (IFB) No. N62472-86-B-0111, issued by the Navy for construction of enlisted personnel housing and dining facilities at the Willow Grove, Pennsylvania Naval Air Station. The Navy rejected Fletcher's bid as nonresponsive because the bid bond with Fletcher's bid did not include the solicitation number or other identification of the bid to which it related.

We dismiss the protest.

The IFB required bidders to submit a bid bond. Fletcher's bid bond, submitted on standard form (SF) 24, did not reference the IFB or the particular project. Fletcher did not complete the blanks on the bond form for bidders to identify the solicitation number and the bid date; the bond indicated only that it was for a construction contract. The Navy rejected Fletcher's bid as nonresponsive because in its view the bid bond did not constitute the firm commitment required by the IFB.

Fletcher argues that the controlling law is that of Pennsylvania where the bond was executed and the construction project will be located and maintains that under Pennsylvania law it is clear that the surety is committed under the bond as written. In this regard, the protester

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notes that the bid bond clearly related to Fletcher's bid on the Willow Grove construction project because the bond was executed on the bid opening date, indicated on its face that it was for a construction contract and was included in a sealed envelope with the bid. Also the protester states that after bid opening, the bonding company sent a letter to the Navy verifying its liability as surety under the bond. Finally, Fletcher contends that the omission of the solicitation number was an apparent clerical error that could be corrected.

Generally, the validity and construction of contracts of the United States and their consequences on the rights and obligations of the parties are questions of federal, not state, law. Nationwide Roofing and Sheet Metal, Inc., 64 Comp. Gen. 474 (1985), 85-1 CPD ¶ 454. Thus, in our view the Federal Acquisition Regulation (FAR) and our decisions provide the proper basis for the determination of the validity of a bid bond submitted under a federal procurement. Nationwide Roofing & Sheet Metal, Inc., 64 Comp. Gen. 474, supra.

The purpose of a bid bond is to secure the liability of a surety to the government in the event the bidder fails to fulfill its obligation to execute a written contract and furnish payment and performance bonds. Hydro-Dredge Corp., B-214408, Apr. 9, 1984, 84-1 CPD ¶ 400. Thus, the sufficiency of a bid bond depends on whether the surety is clearly bound by its terms; when the liability of the surety is not clear, the bond properly may be regarded as defective. Desert Dry Waterproofing Contractors, B-219996, Sept. 4, 1985, 85-2 CPD ¶ 268.

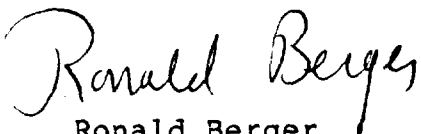
When required, a bid bond is a material part of a bid and therefore must be furnished with the bid. Hydro-Dredge Corp., B-214408, supra. When a bidder supplies a defective bid bond, the bid itself is rendered defective and must be rejected as nonresponsive. A & A Roofing Co., Inc., B-219645, Oct. 25, 1985, 85-2 CPD ¶ 463.

Here, the bond submitted by Fletcher did not refer to the IFB by number or indicate that it was for the particular construction contract at the Willow Grove Naval Air Station, and the contracting officer therefore could not be certain that it was intended to cover that particular contract or that it had not also been submitted in connection with bids

on other construction contracts. See Daniel R. Hinkle, B-220163, Dec. 9, 1985, 85-2 CPD ¶ 639. The fact that the bid bond was in the envelope with the bid and was executed on the bid opening date only evidences that the bond was in fact issued for a project on the day that bids were opened under the subject solicitation; it does not show that the bond was in fact issued for this solicitation. The bond could have easily been issued for another project and slipped into the wrong envelope by mistake. Since, at the time of bid opening, it was uncertain whether Fletcher had provide the government a legally binding bid bond as required by the solicitation, Fletcher's bid was properly rejected as nonresponsive. A & A Roofing Co., Inc., B-219645, supra.

The letter from Fletcher's surety stating that it considered itself liable under the bid bond cannot cure the bid defect since, as a matter of responsiveness, the adequacy of a bid bond must be determined at the time of bid opening solely from the bid documents. Id. Finally, the bid bond could not be corrected after bid opening because the defective bond rendered the bid nonresponsive and a nonresponsive bid generally is not subject to correction because that would permit the bidder to elect whether or not it wished to have its bid considered. Kidd Enterprises, Inc., B-214096, Mar. 6, 1984, 84-1 CPD ¶ 274.

The protest is dismissed.



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