

Cooper



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: G&P Parlamas, Inc.
File: B-226335
Date: April 27, 1987

DIGEST

1. A bid bond on which the original bid opening date has been altered to reflect the date as changed by amendment does not affect the enforceability of the bond by the government against the surety and therefore does not affect the bid's responsiveness.
2. The question of the accuracy of a bidder's small business status certification under a small business set-aside is not a matter of bid responsiveness. Rather, when the agency doubts the accuracy of that certification, it may refer the matter to the Small Business Administration for a size status determination.

DECISION

G&P Parlamas, Inc., protests the proposed award of a contract to L&H Construction Co., Inc., under invitation for bids (IFB) No. DACA51-87-B-0028, a small business set-aside issued by the Army Corps of Engineers for barracks modernization at Fort Monmouth, New Jersey. G&P complains that L&H's low bid is nonresponsive because the accompanying bid bond is materially defective and because L&H certified in the bid that it was a large business concern.

We deny the protest.

Bid opening under the IFB was originally scheduled for January 13, 1987, but was extended by amendment three times; the last amendment set bid opening for February 18. On the required bid bond submitted by L&H, the apparent low bidder, the typed bid date of January 13 had been altered by hand to read February 18, and initialed by the bidder. The Corps determined that the bid date alteration did not render the bid nonresponsive since the solicitation was correctly referenced by number and project and the bid date was correct as amended. Also, the Corps, noting that L&H

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certified in its bid that it was not a small business, referred the issue of L&H's size status to the Small Business Administration (SBA) for a determination.

G&P, the second low bidder, protests that there is no evidence that L&H's surety agreed to the bid date alteration and, therefore, that the bid bond is fatally defective. We disagree.

As a general rule, a material alteration to a bid bond, made without the surety's consent, discharges the surety from liability and renders the bid nonresponsive. Montgomery Elevator Co., B-210782, Apr. 13, 1983, 83-1 CPD ¶ 400. Consequently, where there is no evidence of surety consent, the issue of whether the alteration is material determines the acceptability of the bid. A & A Roofing Co., Inc., B-219645, Oct. 25, 1985, 85-2 CPD ¶ 463.

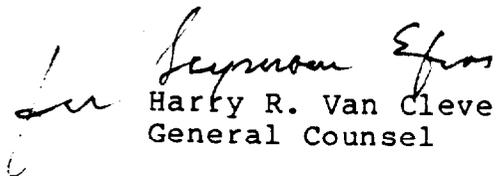
L&H's bid bond is proper and unaltered in all respects other than the one in issue; it correctly identifies the project by solicitation number and description of work and includes an appropriate penal amount. The alteration to it clearly created no confusion as to the bid covered by the bond and did not raise a question as to the obligation the surety undertook, and thus would not affect the enforceability of the bond by the government against the surety. See J.W. Bateson Co., Inc., B-189848, Dec. 16, 1977, 77-2 CPD ¶ 472 (absence of a date on the bid bond does not in itself render bond or bid unacceptable); Kinetic Builders, Inc., B-223594, Sept. 24, 1986, 86-2 CPD ¶ 342. The Corps therefore properly found that the alteration in L&H's bond did not render the bid nonresponsive.

G&P further protests that L&H's bid was nonresponsive because the firm certified that it was not a small business.

To be considered responsive, a bid as submitted must constitute an unequivocal offer to provide the required product or service in conformance with the material terms and conditions of the solicitation. Timberland Paving & Construction Co., B-205179, June 21, 1982, 82-1 CPD ¶ 608. As we explained in our decision in Jimmy's Appliance, 61 Comp. Gen. 444 (1982), 82-1 CPD ¶ 542, the size status representation affects only the bidder's eligibility for award under a small business set-aside, and not the firm's obligation to provide the required services in accordance with the IFB. Any questions concerning the accuracy of the representation therefore may be decided by the SBA on the basis of information outside the bid. Accordingly, the

Corps did not err in finding L&H's bid responsive and in referring the question of the company's size status to the SBA.

The protest is denied.


Harry R. Van Cleve
General Counsel