



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: The King Co., Inc.
File: B-228489
Date: October 30, 1987

DIGEST

Where bidder submits a photocopied bid bond and a photocopied Power of Attorney which indicates on its face that only an original is valid, the bid bond is of questionable enforceability, and the bid is properly rejected as nonresponsive.

DECISION

The King Co., Inc. (King) protests the rejection of its low bid for maintenance dredging of a portion of federally maintained channels within West Harbor, Ohio, under invitation for bids (IFB) No. DACW49-87-B-0030. The Department of the Army rejected the bid because it found King's bid bond to be materially defective.

We dismiss the protest.

King submitted with its bid a photocopy of its bid bond and a photocopy of the General Power of Attorney granting the attorney-in-fact with the authority to bind the surety. The General Power of Attorney form submitted contained the statement "Valid only if Numbered in Red" which appeared above a serial number. Because the form submitted to the contracting officer was a photocopy, this serial number appeared in black, not red. Likewise, the photocopied bid bond submitted did not contain the corporate seals of either the surety or the bidder corporation.

King argues that these defects are matters of form rather than substance and that the bid was therefore responsive. With respect to the absence of corporate seals, King is correct. Our cases hold that the failure to affix corporate seals to a bid bond does not render the bid nonresponsive and such seals may be furnished after bid opening. Siska Construction Co. Inc., B-218428, June 11, 1985, 85-1 C.P.D. ¶ 669. However, the photocopied signature of the Attorney-in-fact of the surety and the photocopied General Power of Attorney render the bid nonresponsive.

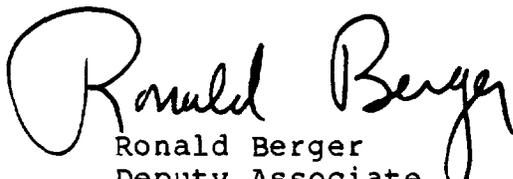
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The central question and the focus of our analysis is whether, in the event of a default by the bidder, King, the surety would be bound based on the information in the possession of the contracting officer at the time of the bid opening. Because the face of the General Power of Attorney indicates that only the original document is valid, the photocopied document was invalid. The attorney-in-fact named in the Power of Attorney who signed the bid bond therefore, insofar as the contracting officer could determine from the bid, did not have authority to bind the surety. Consequently, the bid bond was properly rejected.

The fact that originals could be supplied later does not change the result here. Since the determination as to whether a bid and the accompanying bond is acceptable must be based solely on the documents themselves as they appear at the time of the bid opening, a post-bid explanation may not be used to cure a defect. See Ameron, Inc., B-218262, Apr. 29, 1985, 85-1 C.P.D. ¶ 485. Based on the documents as they appeared at bid opening, the contracting officer was correct in concluding that the surety was not obligated under the bond.

A recent case addressed the similar question of whether a photocopied letter of credit, another type of bid guarantee, was sufficient to secure the liability of the government in the event the bidder failed to fulfill its obligation. Imperial Maintenance, Inc., B-224257, Jan. 8, 1987, 87-1 C.P.D. ¶ 34. We stated there that the fact that the letter of credit was a photocopy, was sufficient to render the instrument defective, since there would be no way (other than by an examination of the original) that the agency could be certain that there had not been alterations to which the bank had not consented. Id. There is a legitimate concern that photocopied documents could be altered without the consent of the surety. See Ameron, Inc., sura. While we do not hold that all photocopied bid bonds necessarily render a bid nonresponsive, the facts of this case dictate that the surety could disclaim liability on the bid bond. Consequently, the bid was nonresponsive.

The protest is dismissed.


Ronald Berger
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General Counsel