



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Walsky Construction Co., Inc.

File: B-228284

Date: November 30, 1987

DIGEST

Bid submitted with bid bond which stated it was for 20 percent of the bid price and contained zeros in the "amount not to exceed" block on the bond form was improperly rejected as nonresponsive because the only reasonable interpretation indicates that the bonding company intended to be bound to 20 percent of the bid price.

DECISION

Walsky Construction Co., Inc., protests the rejection of its low bid as nonresponsive for failing to provide an adequate bid guarantee as required by invitation for bids (IFB) No. F65501-87-B0081, issued by the Department of the Air Force (Air Force) for repair and maintenance of airfield pavements at Elmendorf Air Force Base, Alaska. Performance has been stayed pending our decision.

We sustain the protest.

The IFB required a bid guarantee in the form of a bid bond, standard form 24, of 20 percent of the total bid price. The solicitation incorporated by reference the clause in the Federal Acquisition Regulation (FAR), 48 C.F.R. § 52.228-1 (1984), which requires that a bidder submit a bid guarantee in the form of a firm commitment and states that failure to furnish the bid guarantee in the proper form and amount by the time set for bid opening may be cause for rejection of the bid. The FAR, 48 C.F.R. § 28.101-2, also provides that the "bid guarantee amount shall be at least 20 percent of the bid price but not exceed \$3 million. When the panel sum is expressed as a percentage, a maximum dollar limitation may be stated."

As its bid guarantee, Walsky submitted a surety bond which stated that it was for 20 percent of the bid price. The "amount not to exceed" block, on the bond form, was filled

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in with 11 zeros. The Air Force determined that the bond was unacceptable because the liability of the surety was unclear. The 11 zeros could mean in the agency's view that the bonding company was not binding itself to pay any amount.

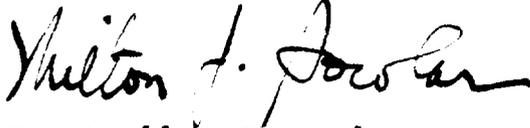
The purpose of a bid guarantee is to secure the liability of a surety to the government in the event the bidder fails to fulfill its obligation to execute a written contract and furnish payment and performance bonds. Hydro-Dredge Corp., B-214408, Apr. 9, 1984, 84-1 CPD ¶ 400. When the liability of the surety is not clear, the guarantee properly is regarded as defective and the bid rejected as nonresponsive. BKS Construction Co., et al., May 28, 1987, 66 Comp. Gen. _____, 87-1 CPD ¶ 558.

We believe, however, that Walsky's bond, taken as a whole, clearly establishes the bonding company's liability and provides the requisite firm commitment. The only reasonable interpretation of the zeros following the notation that the bond is in the amount of 20 percent of the bid price is that the surety did not intend to put a maximum dollar limit on its liability, as permitted by the FAR, 48 C.F.R. § 28.101-2, supra. It is not reasonable to assume that the bonding company would complete and sign the bond and insert the 20 percent limitation if it did not intend to be bound. See James S. Jackson Co., Inc., B-211741, July 12, 1983, 83-2 CPD ¶ 84.

Our conclusion in this case is not inconsistent with our cases which uphold the rejection of a bid where the bid bond contains the proper percentage but a ceiling amount that is above zero, but less than the amount specified in the IFB. See Tom Mistick & Sons, Inc., B-222326, Apr. 3, 1986, 86-1 CPD ¶ 323. Here, unlike those situations, there is not a reasonable possibility that the zero amount will be interpreted as limiting the surety's liability. It simply makes no sense to conclude that the bond was prepared so as to represent no liability at all on the surety's part. In the case of the bond with a lesser ceiling amount but more than zero, the bond itself would be enforceable but for an amount not consistent with the solicitation's requirement. Such a bond therefore is unacceptable.

Thus, we recommend that the contract with Airport Construction and Materials, Inc., be terminated for convenience and if otherwise proper award be made to Walsky.

The protest is sustained.

A handwritten signature in cursive script, reading "Milton J. Fowler".

Acting Comptroller General
of the United States