



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Golden Reforestation, Inc.

File: B-230169

Date: February 25, 1988

DIGEST

1. The enforceability of a bid bond that does not include the signature of the surety's attorney-in-fact is sufficiently questionable to warrant rejection of the bid as nonresponsive.
2. Prior dealing between the parties does not affect the responsiveness of a bid since responsiveness must be determined at the time of bid opening and generally from the face of the bid and the materials submitted with it.
3. Delays of contracting agency in advising of the non-responsiveness of the bid does not affect the validity of the rejection of the bid.

DECISION

Golden Reforestation, Inc. protests the rejection of its bid as nonresponsive to solicitation No. R6-5-88-20 issued by the United States Department of Agriculture's Forest Service, Umpqua National Forest. Although Golden's bid bond was affixed with the corporate seal of the surety and contained the power of attorney appointing the attorney-in-fact, it was not signed by the attorney-in-fact and was therefore found by the contracting officer to be unenforceable. The bid was rejected as nonresponsive because of the defective bid bond. We dismiss the protest.

The purpose of the bid bond requirement is to protect the financial interests of the government in the event the bidder fails to execute the required contract documents and deliver the required bonds. Inland Service Corp., B-211202, Apr. 20, 1983, 83-1 CPD ¶ 425.

Contrary to Golden's assertion, the omission of the signature of the surety's attorney-in-fact is not a "minor fact." The bid bond is a material part of the bid so that a defective bond renders the bid nonresponsive, unless the bidding documents establish that the bond could be enforced

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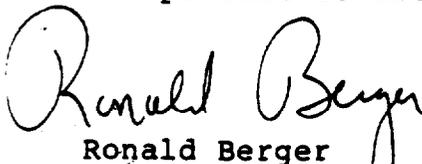
if the bidder did not execute the contract. Crimson Enterprises, Inc., B-220204, B-220205, Oct. 1, 1985, 85-2 CPD ¶ 363. In Truesdale Construction Co., Inc., B-213094, Nov. 18, 1983, 83-2 CPD ¶ 591, we noted that because there is no consensus among legal authorities regarding the surety's ability to disclaim liability on a bond because of the absence of the signature of its attorney-in-fact, a contracting officer acts reasonably in concluding the unsigned bond is defective and in rejecting the bid as nonresponsive. As the power of attorney was also included in the Truesdale bid, the facts are identical with the case at hand. Since we find nothing to suggest that the bond could be enforced with any certainty in this case either, we find no basis upon which to alter the conclusion we reached in Truesdale.

Golden maintains further that its successful completion of contracts for the Umpqua National Forest over the past 10 years constitutes evidence of historical performance and vitiates the necessity of a surety's representative's signature. We do not agree.

The responsiveness of a bid must be determined as of the time of bid opening and generally from the face of the bid and the materials submitted with it. Handyman Exchange, Inc., B-224188, Jan. 7, 1987, 87-1 CPD ¶ 23. Thus, the past course of dealing cannot affect the responsiveness of a bid. Cf. Inscom Electronics Corp., B-225858, Feb. 10, 1987, 87-1 CPD ¶ 147 (concerning an agency's acceptance of nonresponsive bids on prior occasions). We therefore find no merit to this assertion.

Finally, Golden asserts that the determination that its bid was nonresponsive was discretionary because there was a period of 12 days between the date the bid results were announced and the date on which the contracting officer notified Golden of the nonresponsiveness of its bid. While we do not believe that the alleged delay was unreasonable or that any conclusions concerning the contracting officer's discretion should be drawn from that delay, we point out that any such delay does not affect the validity of the rejection of the bid. Rodenberg's Floor Coatings, Inc., B-215807, Nov. 23, 1984, 84-2 CPD ¶ 548.

The protest is dismissed.


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