

JANUARY



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Professional Restoration Services, Inc.

File: B-232424

Date: January 9, 1989

DIGEST

A protester's bid bond is enforceable against a single corporate surety that, in executing the bond, specifies an intent to be bound to the penal sum by completing the liability limit portion of the bid bond form, even though the penal sum is left blank.

DECISION

Professional Restoration Services, Inc. (PRSI) protests the rejection of its low bid under invitation for bids (IFB) No. F28609-88-B-0024, for corrosion control of building interiors at McGuire Air Force Base, New Jersey. The bid was rejected as nonresponsive because no penal sum had been entered on the bid bond accompanying the bid, as required by the IFB.

We sustain the protest.

The IFB required each bidder to submit with its bid a bid bond (standard form (SF) 24) in the amount of 20 percent of the total bid price, or \$13,995 in the case of the protester. Four bids were received in response to the solicitation, with PRSI the apparent low bidder. However, the Air Force rejected PRSI's bid for failure to insert an amount for the penal sum of bond.

PRSI admits that the penal sum was omitted but argues this deficiency is not fatal to its bid. PRSI claims that since the liability limit in the corporate surety section of SF 24 was completed by the surety with a figure of \$13,000, the "Obligation" paragraph binds the surety to the liability limit. The language relied upon by PRSI is:

"We, the Principal and Surety(ies) are firmly bound to the United States . . . in the above penal sum. For payment of the penal sum, we

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bind ourselves . . . jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties bind ourselves in such sum 'jointly and severally' as well as 'severally' only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum." (Emphasis added.)

PRSI argues that the language of the SF 24 Obligation paragraph allows the liability limit to substitute for the penal sum of bond. We agree in this case because there is only one corporate surety that is liable for the full penal amount. In a situation with multiple corporate sureties, each surety may be liable for only a portion of the penal sum. Thus, the specified liability limits and the required penal sum are not necessarily equivalent where multiple sureties are involved.

The test in these cases is whether the government can enforce the bond against the surety in the event the bidder fails to execute the required contract documents and deliver the required bonds. See Golden Reforestation, Inc., B-230169, Feb. 25, 1988, 88-1 CPD ¶ 196. PRSI's surety inserted a liability limit of \$13,000 on the bond. We believe that this liability agreement along with the authorized signature of the attorney-in-fact are sufficient evidence to establish the intention of the corporate surety to be bound for a penal sum in the amount of \$13,000.

We also find the bond to be sufficient, even though it is somewhat less than the 20 percent required by the solicitation. Where the liability limit specified is less than the penal sum required by the IFB, the bid ordinarily will be rejected under Federal Acquisition Regulation (FAR) § 28.101-4 as nonresponsive. PRSI falls within an exception, however, since the difference between the liability limit and the penal sum required is slight; PRSI's bid bond of \$13,000 is greater than the difference between the bid price and the next higher acceptable bid. See FAR § 28.101-4(b).

Accordingly, as PRSI's bid bond is enforceable against the surety, its bid is responsive and should not have been rejected. We, therefore, recommend that award be made to PRSI. We also find the protester to be entitled to be reimbursed for its cost of filing and pursuing the protest, including any reasonable attorneys' fees it may have incurred. The claim for reimbursement should be submitted directly to the agency. If the parties are unable to agree on an amount, the claim should be submitted to us for a determination of the amount due. 4 C.F.R. § 21.6 (1988).

The protest is sustained.

for 
Comptroller General
of the United States