



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: All Star Maintenance, Inc.

File: B-234820

Date: March 24, 1989

DIGEST

Evidence of the authority of a surety's agent to sign a bid bond on behalf of the surety generally must be furnished with a bid prior to bid opening; failure to timely furnish such evidence renders bid nonresponsive.

DECISION

All Star Maintenance, Inc., protests the rejection of its low bid under invitation for bids (IFB) No. F33601-89-B-0002, issued by the United States Air Force for bathtub installation in military family housing at Wright-Patterson Air Force Base, Ohio.

We deny the protest.

At bid opening, All Star's bid was accompanied by a bid bond issued by Merchants Bonding Company Mutual as surety and signed by David L. Walker, as attorney-in-fact. The accompanying power of attorney form authorizing David L. Walker, to bind the surety, however, was issued for a different surety, the Insurance Company of North America. The agency determined that All Star's bid bond was defective because it was not accompanied by a valid power of attorney attesting to the authority of the attorney-in-fact as agent of the surety who was named on the bid bond. Consequently, the Air Force rejected All Star's bid as nonresponsive.

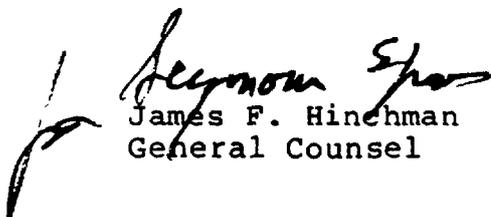
All Star contends that the bond submitted with the bid was sufficient, binding and timely; that David L. Walker, was an attorney-in-fact for Merchants Bonding Company at all times relevant to this procurement; and that the substitution of the incorrect power of attorney form was a minor informality or inconsequential act subject to correction.

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We disagree. A bid bond or bid guarantee is a type of security that assures that the bidder will not withdraw its bid within the time specified for acceptance and, if required, will execute a written contract and furnish payment and performance bonds. The purpose of the bid bond is to secure the liability of the surety to the government if the bidder fails to fulfill these obligations. JC Construction Co., B-229486, Dec. 29, 1987, 87-2 CPD ¶ 640. Thus, we have repeatedly held that a bid bond is defective, rendering the bid nonresponsive, if it is not clear that the bond will bind the surety. Id.; Baldi Brothers Constructors, B-224843, Oct. 9, 1986, 86-2 CPD ¶ 418. The reason for this is that under the law of suretyship, no one can be obligated to pay the debts or to perform the duties of another unless that person expressly agrees to be bound. Anderson Construction Co.; Rapp Constructors, Inc., 63 Comp. Gen. 248 (1984), 84-1 CPD ¶ 279. We have also held that it is not proper to consider the reasons for the nonresponsiveness, whether due to mistake or otherwise. JC Construction Co., B-229486, supra.

The absence of a proper power of attorney in this instance created an uncertainty as to whether the signer of the bid bond was duly authorized to bind the surety and, therefore, the defect could not be waived as a minor informality. JC Construction Co., B-229486, supra. In this regard, there was no way to establish the attorney-in-fact's authority from the bid absent a correct power of attorney form submitted by bid opening.

The protest is denied.


James F. Hinchman
General Counsel