



The Comptroller General
of the United States

Washington, D.C. 20548

Jones

Decision

Matter of: Darla Environmental, Inc.

File: B-234560

Date: May 12, 1989

DIGEST

Where bidder submits bid bond containing signatures of individual sureties photocopied on bid form prior to completion of the form, contracting officer properly rejected bid as nonresponsive because the bid bond is of questionable enforceability.

DECISION

Darla Environmental, Inc., protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. 263-88-B(93)-0352, issued by the National Institutes of Health (NIH) for renovation and asbestos abatement at Building 5 on its Bethesda campus. NIH rejected Darla's bid because it was not accompanied by a properly executed bid bond.

We deny the protest.

The IFB required the submission of a bid guarantee in the amount of 20 percent of the bid price or \$3 million, whichever is less. Ten bids were opened on December 15, 1988, and the apparent low bidder was Darla. After requesting information on the responsibility of the bidder and of the individual sureties, the contracting officer questioned the authenticity of the signatures on the bid bond and the accompanying affidavits of individual surety. The documents were then turned over to the Bureau of Alcohol, Tobacco and Firearms, Forensic Science Laboratory for examination. The laboratory report confirmed that the signatures of the sureties, wherever they appeared on the bid bond or the affidavits of individual surety, were electrostatic copies and not original signatures. After receiving this report the contracting officer by letter dated February 9, 1989, notified Darla that its bid had been found nonresponsive and would not be considered for award.

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Although it does not specifically refute the results of the laboratory report, Darla argues that the sureties had actually agreed to the bond liability and states that in any event if the signatures were as the agency says they could have been cured as a minor informality or irregularity. Darla also argues that since the agency first questioned the responsibility of the sureties it waived its right to subsequently reject the bid as nonresponsive.

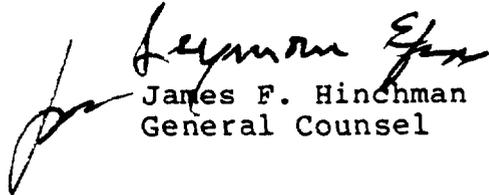
The determinative question in judging the sufficiency of a bid guarantee is whether it could be enforced if the bidder subsequently fails to execute required contract documents and to provide performance and payment bonds. Southern California Engineering Co., Inc., B-232390, Oct. 25, 1988, 88-2 CPD ¶ 391. For the bid guarantee to be enforceable, the surety must be clearly bound by information in the bid at the time of bid opening. Id. Here, Darla's use of a bid bond containing signatures of individual sureties reproduced on the bid form--as shown by the laboratory report, which the protester does not refute--creates serious doubts about the liability of the sureties. Although the protester now states that the sureties were aware of the bond there is nothing to prevent them from disagreeing with the protester and arguing that the bonding documents were executed without their knowledge. Since the liability of the sureties is not clear, NIH properly regarded the bid guarantee as defective and rejected the bid as nonresponsive. Id. Furthermore, contrary to Darla's contention that this was a minor informality which it should have been allowed to correct after bid opening by the submission of a new bid guarantee, a required bid bond is a material condition of responsiveness with which there must be compliance at the time of bid opening. Giles Management Constructors, Ltd., B-227982, Sept. 14, 1987, 87-2 CPD ¶ 248.

Darla next argues that NIH somehow waived its right to reject Darla's nonresponsive bid because it did not do so right after bid opening and instead questioned the sureties' responsibility. We disagree. An agency's actions do not constitute a waiver of the bidder's error nor estop the government from rejecting the bid where, as here, it is ultimately properly rejected as nonresponsive. See Dean's Security Professionals, B-224429, July 31, 1986, 86-2 CPD ¶ 32.

Further, Darla has raised a host of arguments concerning such matters as the responsibility of its sureties, the agency's treatment of its Freedom of Information Act request, and an alleged protest filed by another bidder. In view of the fact that we have determined that the agency properly rejected Darla's bid as nonresponsive, there is no

need to consider the remaining arguments. As far as the protester's request for a conference first made in its response to the agency report, the request is denied as it would serve no useful purpose.

The protest is denied.



James F. Hinchman
General Counsel