



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: G & A General Contractors
File: B-236181
Date: October 4, 1989

DIGEST

Where bidder has submitted only a facsimile copy of a bid bond as of the time of bid opening, the bid bond is of questionable enforceability and the bid is properly rejected as nonresponsive; since responsiveness cannot be established after bid opening, the defect in the bond cannot be cured by the bidder's submission of the original bid bond subsequent to bid opening.

DECISION

G & A General Contractors protests the rejection of its apparent low bid, and the award of a contract to any other firm, under invitation for bids (IFB) No. DTG81-89-B-00625, issued by the United States Coast Guard for painting and floor refinishing of base housing units in Massachusetts. The Coast Guard rejected G & A's bid as nonresponsive because at bid opening G & A submitted only a facsimile copy of a required bid bond with its bid.

We deny the protest.

G & A argues that its submission of the original bid bond subsequent to bid opening should have cured any defect arising from its inadvertent failure to submit the original with its bid, since the Coast Guard easily could have compared the facsimile with the original to ascertain the validity of the bid guarantee prior to making an award.

The determinative issue concerning the acceptability of a bid bond is always whether, in the event of a default by the bidder, the contracting agency could be certain that the surety would be bound, based on the information in the possession of the contracting agency at the time of bid opening. See The King Co., Inc., B-228489, Oct. 30, 1987, 87-2 CPD ¶ 423. If the agency cannot determine definitely from the documents submitted with the bid that the surety

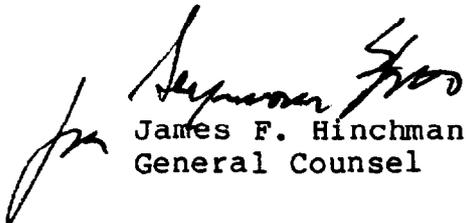
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would be bound, the bid is nonresponsive and must be rejected. In these circumstances, the bond deficiency may not be corrected after bid opening; otherwise, a bidder essentially would have the option, after bid opening, of accepting or rejecting the award by either correcting or not correcting the bond deficiency, which is inconsistent with the sealed bidding system. See Contract Services Co., Inc.--Request for Recon., B-226774.4, May 6, 1988, 88-1 CPD ¶ 441.

In similar cases, we have held that photocopies of bid bonds do not satisfy the requirement for a bid guarantee, because there is no way, other than examination of the originals after bid opening, for the contracting agency to be certain that there had not been alterations to which the surety had not consented, and that the government, therefore, would in fact be secured. The King Co., Inc., B-228489, *supra*. A facsimile, which is an electronically transmitted copy, is subject to the same uncertainty as a photocopy transmitted by mail; because it is not the original, there is no way to be certain that unauthorized alterations have not been made.

Here, G & A's submission of a facsimile copy of its bid bond clearly raises a question of enforceability that can be resolved only by reference to other documents after bid opening. Accordingly, G & A's bid was nonresponsive and was properly rejected.

The protest is denied.


James F. Hinchman
General Counsel