



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: American Asbestos Abatement, Inc.

File: B-237513

Date: November 29, 1989

DIGEST

Protester's bid is properly rejected as nonresponsive where the corporate surety for the protester's bid bond is not listed in Treasury Department Circular 570 at the time of bid opening, and such a deficiency may not be corrected after bid opening.

DECISION

American Asbestos Abatement, Inc. (AAA), protests the rejection of its apparent low bid as nonresponsive under invitation for bids (IFB) No. 660-38-89, issued by the Department of Veterans Affairs (VA) for asbestos abatement at the VA Medical Center, Salt Lake City, Utah.

Based on the protester's initial submissions, we dismiss the protest.

The IFB was issued on August 18, 1989, with bid opening scheduled for September 20. The IFB required a bid guarantee in the amount of 20 percent of the bid price or \$3 million whichever is less. Of the five bids received at bid opening, AAA submitted the apparent low bid. At a meeting on September 25 between AAA and the agency, the agency indicated that AAA's bid would be rejected as nonresponsive because AAA's corporate surety, Southern American Insurance Company, was not an approved surety listed in Treasury Department Circular 570 entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies." On September 29, AAA filed an agency-level protest alleging that the IFB did not indicate that an approved Treasury listed corporate surety was required for the bid bond. In any event, AAA stated that it would substitute an acceptable corporate surety for its bid bond.

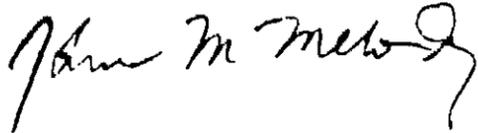
By letter dated October 13, the agency denied AAA's agency-level protest and rejected AAA's bid as nonresponsive because it had not provided an approved Treasury listed corporate surety for its bid bond prior to bid opening. This protest followed on October 30.

AAA argues that the rejection of its bid as nonresponsive because of its use of a non-Treasury listed corporate surety for its bid bond was improper because there was nothing in the solicitation which required that a corporate surety be listed in Treasury Department Circular 570 or which incorporated by reference any such requirement. We disagree. Under Federal Acquisition Regulation (FAR) § 28.202-1(a)(1), all corporate sureties offered for bonds furnished with contracts to be performed in the United States must appear on the list contained in Treasury Department Circular 570. Where, as here, a solicitation provides that failure to provide a bid bond in proper form or amount may be a basis for rejection of a bid, a bidder is on notice that not all sureties will be considered adequate and it is incumbent upon a bidder to determine which sureties are acceptable to the government. Midwest Asbestos Removal Service, Inc., B-233109, Nov. 10, 1988, 88-2 CPD ¶ 473. As a result, the absence of a bidder's corporate surety from Treasury Department Circular 570 operates to render the bid nonresponsive, notwithstanding the fact that the solicitation does not specifically mention the requirement concerning corporate sureties. Siska Constr. Co., Inc., B-218428, June 11, 1985, 85-1 CPD ¶ 669. Here, at the time of bid opening, AAA's corporate surety was not listed in Treasury Department Circular 570. Therefore, AAA's bid was properly rejected as nonresponsive.

AAA has subsequently offered to substitute an acceptable Treasury listed corporate surety for its bid bond and argues that acceptance of its apparent low bid will result in a cost savings to the government. However, since a nonresponsive bid cannot be made responsive after bid opening, AAA's offer to submit an approved corporate surety at this time cannot be accepted. See Lava Tap Cleaning Servs., Inc., B-234728, May 18, 1989, 89-1 CPD ¶ 479. Furthermore, the fact that a cost savings would result to the government from accepting AAA's apparent low bid does not provide a proper basis for accepting its bid. We have consistently held that a nonresponsive bid may not be accepted even though it would result in monetary savings

since acceptance would be contrary to the public interest in maintaining the integrity of the competitive bidding system. Siska Constr. Co., Inc., B-218428, supra.

Accordingly, the protest is dismissed.



for Ronald Berger
Associate General Counsel