

Benejam



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Blakelee Inc.

File: B-239794

Date: July 23, 1990

Floyd Guynn, for the protester.
Colonel Herman A. Peguese, Department of the Air Force, for the agency.
Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. A bid bond which references an incorrect solicitation number is materially defective in the absence of other objective evidence which clearly establishes at the time of bid opening that the bond was intended to cover the bid for which it was actually submitted. If uncertainty exists that a bond is enforceable by the government against the surety, the bond is unacceptable and the bid must be rejected as nonresponsive.
2. When a bidder supplies a defective bond, the bid itself is rendered defective and must be rejected as nonresponsive; the importance of maintaining the integrity of the competitive bidding system outweighs the possibility that the government might realize monetary savings if a material deficiency in a bid is corrected or waived.

DECISION

Blakelee Inc. protests the rejection of its bid as non-responsive and the award of a contract to Bobbie D. Haynes Construction Co. under invitation for bids (IFB) No. F41612-90-B0015, issued by the Department of the Air Force for sealing of runway and taxiway areas at Sheppard Air Force Base (AFB) in Texas. Blakelee's bid was rejected because the accompanying bid bond contained an IFB number different from that under which it was submitted.

We deny the protest.

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The IFB required the submission of a bid bond or other suitable bid guarantee in the amount of 20 percent of the bid. Blakelee was the apparent low bidder on April 12, 1990, the bid opening date. The bid bond submitted with Blakelee's bid referenced another solicitation under the heading "Bid Identification" on Standard Form (SF) 24, the bond form; specifically, the SF 24 cited IFB No. F04612-90-B0012 (B0012) instead of the correct IFB No. F41612-90-B0015 (B0015). The SF 24 correctly identified the bid opening date as April 12 and the IFB as involving construction work. Because the SF 24 contained the erroneous IFB number, however, the Air Force determined that the bid bond was defective, and rejected Blakelee's bid as nonresponsive. On May 16, the Air Force awarded the contract to Haynes.^{1/}

The Air Force rejected Blakelee's bid based on its conclusion that the bond would not be enforceable because the reference to another IFB rendered the bond defective, since it was unclear whether the bond was intended to cover the IFB under which it was submitted. In this regard, the Air Force noted that there were a number of similarities between the IFB identified on the SF 24 and that under which it was submitted. Both solicitations (IFB Nos. B0012 and B0015) were construction projects requiring bonds with a penal sum of 20 percent and both had the same original bid opening date. IFB No. B0012, identified on Blakelee's bid bond, however, was for an IFB for similar work at Mather AFB in California, for which bonds were required and under which Blakelee submitted a bid by April 20, the extended bid opening date under IFB No. B0012.

Blakelee essentially argues that the Air Force's doubts about the enforceability of the bond are unreasonable because identifying IFB No. B0012 rather than IFB No. B0015 on the bond was only a technical defect caused by a typographical error, and would not affect the enforceability of the bond. Blakelee also objects to the award to Haynes on the ground that the government will spend approximately \$26,970 more than if it had awarded the contract to Blakelee.

The submission of a required bid bond is a material condition of responsiveness with which a bid must comply at the time of bid opening. Baucom Janitorial Serv., Inc., B-206353, Apr. 19, 1982, 82-1 CPD ¶ 356. When a bond is

^{1/} On June 7, 1990, the Air Force determined pursuant to Federal Acquisition Regulation § 33.104(c)(2), that it was in the best interest of the government not to suspend Haynes' performance under the contract.

alleged to be defective, the determinative question is whether the bond is enforceable by the government against the surety notwithstanding the defect. See J.W. Bateson Co., Inc., B-189848, Dec. 16, 1977, 77-2 CPD ¶ 472. If uncertainty exists at the time of bid opening that the bidder has furnished a legally binding bond, the bond is unacceptable and the bid, therefore, must be rejected as nonresponsive. See A&A Roofing Co., Inc., B-219645, Oct. 25, 1985, 85-2 CPD ¶ 463.

Whether a bid bond is acceptable even if it cites an incorrect solicitation number depends upon the circumstances. Where there are clear indicia on the face of the bond to identify it with the correct solicitation, the bond is acceptable. In such cases, the incorrect solicitation number is merely a technical defect which does not affect the enforceability of the bond. See Instruments & Controls Serv. Co., B-224293.2, Feb. 17, 1987, 87-1 CPD ¶ 170; Custodial Guidance Sys., Inc., B-192750, Nov. 21, 1978, 78-2 CPD ¶ 355. On the other hand, an incorrect solicitation number may make a bid bond defective where there is another ongoing solicitation to which the incorrect number could refer and, as a result, reasonable doubt exists as to whether the government could enforce the bond. See Fitzgerald & Co., Inc.--Request for Recon., B-223594.2, Nov. 3, 1986, 86-2 CPD ¶ 510, aff'g Kinetic Builders, Inc., B-223594, Sept. 24, 1986, 86-2 CPD ¶ 342.

With respect to the effect of an erroneous solicitation number referenced in a bid bond, we held in Custodial Guidance Sys., Inc., B-192750, supra, that a bid bond was enforceable by the government against the surety even though it contained the incorrect solicitation number where the error was obviously clerical in nature (the transposition of two digits, "19145" instead of "19154"); the bond correctly stated the scheduled bid opening date; the agency conducted only one bid opening on that date; and the incorrect number was for a prior procurement for which bonds were not required, and in which the bidder had not submitted a bid. We therefore concluded in Custodial Guidance that since the erroneous solicitation number had created no confusion as to the bid covered by the bond, the defect would not affect the enforceability of the bond by the government against the surety.

We reached a different result in A&A Roofing Co., Inc., B-219645, supra, where the bond was materially defective because it referenced not only the wrong solicitation number, but also the wrong bid opening date, and there was no other objective evidence of the intent of the surety to provide a bond on the bid in question. We found it

significant that the solicitation number and date entered on the bond accurately identified another solicitation for the same kind of work at the same facility, the bid opening for which had been only 11 days earlier than that of the protested procurement. Given the existence of the other solicitation, it was uncertain at the time of bid opening whether the surety had consented to be bound on the solicitation for which the bond was actually submitted. Thus, we found that the bond in A&A Roofing was materially defective requiring rejection of the bid as nonresponsive.

Here, it is undisputed that IFB No. B0012, as erroneously identified in Blakelee's bond, was an ongoing solicitation for construction with an original bid opening date, April 12, identical to the bid opening date under IFB No. B0015. Blakelee's bond identified the work to be performed in general terms as "Construction," which in our view could reasonably refer either to the work called for under IFB No. B0015 at Sheppard AFB (sealing runways and taxiways), or to similar work under IFB No. B0012 at Mather AFB (repairing aprons and resealing joints and cracks on an airfield). Thus, apart from the April 12 bid opening date referenced on the bond, there are no other indicia on the bond to identify it with IFB No. B0015. Moreover, unlike the facts in Custodial Guidance, the erroneous solicitation number does not involve a mere transposition of digits. We do not regard the insertion of "F041612-90-B0012" instead of "F41612-90-B0015" as only a minor typographical error as Blakelee contends, especially since the prefix "F04612" identifies Mather AFB, while the prefix of the correct IFB, "F41612," identifies Sheppard AFB. See, e.g., Kinetic Builders, Inc., B-223594, supra (where we did not regard the insertion of "B0051" instead of "B0019" on a bid bond as only a minor clerical error).

Although the surety's agent in this case has stated after bid opening that it made a typographical error in the bond with regard to the IFB number and has apparently consented to a correction, thereby indicating that the bond was intended to cover Blakelee's bid under IFB No. B0015, the fundamental rule remains that a nonresponsive bid cannot be made responsive by actions taken to correct a defective bond after bid opening. Jay Schartz Contracting, B-237481, Oct. 30, 1989, 89-2 CPD ¶ 400. Thus, the Air Force correctly rejected Blakelee's bid as nonresponsive.

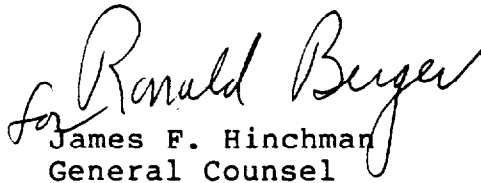
Blakelee further asserts that since the government had in its possession an approved Small Business Administration (SBA) Form 990, "Surety Bond Guarantee Agreement," there should have been no uncertainty as to whether the bond was

enforceable.^{2/} Although Blakelee included with its protest a copy of an approved SBA Form 990, which correctly describes the nature and location of the work called for by IFB No. B0015, and contains the correct bid opening date, Blakelee did not submit this form with its bid, and the contracting officer did not possess a copy at bid opening. Consequently, the fact that SBA had approved Blakelee's Form 990 does not overcome the uncertainty caused at bid opening by the erroneous IFB number on the bond Blakelee submitted with its bid.

Because the erroneous IFB number created uncertainty at the time of bid opening as to the enforceability of the bond, not overcome by other objective evidence, the bond was defective. When a bidder supplies a defective bond, the bid itself is rendered defective and must be rejected as nonresponsive. HTP Enters., Inc., B-235200, Apr. 27, 1989, 89-1 CPD ¶ 418. Accordingly, the Air Force properly rejected Blakelee's bid as nonresponsive and awarded the contract to Haynes, the second low bidder.

With respect to Blakelee's contention that the government would save money by awarding to Blakelee, the importance of preserving the integrity of the competitive bidding system outweighs the possibility that the government might realize monetary savings if a material deficiency in a bid is corrected or waived. Abar Ipsen Indus., B-219499.2, Jan. 3, 1986, 86-1 CPD ¶ 7.

The protest is denied.


for Ronald Berger
James F. Hinchman
General Counsel

^{2/} A completed and approved SBA Form 990 indicates that the SBA guarantees the contractor's surety indicated on the form against up to 80 percent of the loss resulting from breach by the contractor of the terms of bond. See 13 C.F.R. Part 115, Appendix A (1990). Thus, contrary to the protester's contention, execution of the form by SBA does not make the government itself the surety for the contractor.