



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Grafton McClintock, Inc.

File: B-241581.2

Date: April 17, 1991

Robert G. McClintock for the protester.
John E. Larsen, Jr., for Baidarka Corp., an interested party.
Millard F. Pippin, Department of the Air Force, for the agency.
Robert A. Spiegel, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Bid should be rejected as nonresponsive where it is accompanied by a bid bond containing an incorrect solicitation number, project title, job location and bid opening date, since there is no objective evidence that the bond was intended to apply to the procurement.

DECISION

Grafton McClintock, Inc. protests the termination of its contract and the subsequent award to Baidarka Corporation under invitation for bids (IFB) No. F65503-90-B-0036, issued by Eielson Air Force Base, Alaska, for the repair, alteration, and maintenance of Building No. 200 at Clear Air Force Station, Alaska. Grafton McClintock alleges that there are material defects in Baidarka's bid bond that render Baidarka's bid nonresponsive.

We sustain the protest.

The IFB required the submission of a bid bond in the amount of 20 percent of the bid price. Bid opening was originally scheduled for September 24, 1990. Amendment No. 0001 extended that date to September 26, and amendment No. 0004 further extended that date to September 28. The Air Force received six bids in response to the IFB. Baidarka submitted the low bid at \$747,936; Grafton McClintock's bid was second low at \$763,400.

The contracting officer discovered irregularities in Baidarka's bond, which she found made the bond unacceptable. Consequently, the Air Force rejected Baidarka's bid as nonresponsive. Award was made to Grafton McClintock on September 29. On October 9, Baidarka protested the rejection of its bid to our Office. On November 15, the Air Force advised our Office that, upon further review, it found that the irregularities in Baidarka's bid bond did not render it unenforceable. The Air Force proposed to terminate Grafton McClintock's contract and make award to Baidarka. On November 20, we dismissed Baidarka's protest as academic in light of the Air Force's proposed corrective action. On December 7, Grafton McClintock filed this protest.

Baidarka's bid bond contains several irregularities: (1) it refers to an IFB numbered F65501-90-B-0036, instead of the subject F65503-90-B-0036; (2) it identifies the project as one to "Remodel Administration Building," instead of one to "Maintain/Repair and Alter Building 200"; (3) it specifies the location of the work as Eielson Air Force Base, Alaska, instead of Clear Air Force Station; and (4) it indicates the bid date as September 26 (the bid opening date before the last amendment to the IFB was issued), instead of September 28 (the actual bid opening date).

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. Blakelee Inc., B-239794, July 23, 1990, 90-2 CPD ¶ 65. When a bond is alleged to be defective, the determinative issue is whether the surety has sufficiently manifested an intention to be bound under the IFB, so that the bond would be enforceable by the government in the event of a default by the contractor. Joseph B. Fay Co., B-241769.2, Mar. 1, 1991, 91-1 CPD ¶ 234. Where there is uncertainty that a bidder has furnished a legally binding bid bond at the time of bid opening, the bond is unacceptable and the bid must be rejected as nonresponsive. Id; A&A Roofing Co., Inc., B-219645, Oct. 25, 1985, 85-2 CPD ¶ 463.

The solicitation number referenced within a bid bond is a material element that directly affects the acceptability of that bond. Joseph B. Fay Co., B-241769.2, supra; Fitzgerald & Co., Inc.--Recon., B-223594.2, Nov. 3, 1986, 86-2 CPD ¶ 510. Whether an agency may accept a bond that inaccurately identifies the solicitation depends upon the circumstances. Kirila Contractors, Inc., 67 Comp. Gen. 455 (1988), 88-1 CPD ¶ 554; Blakelee Inc., B-239794, supra. Although a bid bond citing an incorrect solicitation number may be accepted where

there are clear indicia on the face of the bond that identify it with the correct solicitation, see Kirila Contractors, Inc., 67 Comp. Gen. 455, supra, it may not be accepted if there is reasonable doubt whether the government could enforce the bond for the subject solicitation. Joseph B. Fay Co., B-241769.2, supra.

The agency based its decision to reverse the contracting officer's nonresponsiveness determination and accept Baidarka's bid on Kirila Contractors, Inc., 67 Comp. Gen. 455, supra. In that case, as in this one, the low bidder misidentified one digit of the solicitation number. However, we found the bid bond was nevertheless acceptable because it correctly identified the covered project work and bid opening date. Moreover, the erroneous solicitation number in Kirila was an obvious typographical error, and there were no other solicitations with which the accompanying bond could be confused.

Here, Baidarka's bond does not accurately designate the work to be covered by the solicitation, the location of that work, or the actual bid opening date, and Baidarka's bid bond reasonably could have been interpreted as referring to another IFB. For example, an IFB for another construction project, IFB No. F65503-90-B-0034 (-0034) bears a number that is similar to the one identified in the Baidarka bond. IFB -0034 had a September 26 bid opening date (the date identified in Baidarka's bond) and was for work similar to that identified in the Baidarka bond (both were for building construction projects). Thus, we do not find sufficient objective evidence that the bond clearly indicated that it was intended to apply to this IFB. See Joseph B. Fay Co., B-241769.2, supra; Blakelee Inc., B-239794, supra.

The Air Force now asserts that it had no doubt as to what Baidarka's bond covers because there is no "Administration Building" at Eielson Air Force Base and because bid opening on this IFB was once scheduled for September 26 (when the bond was executed). However, we think that the multitude of discrepancies in Baidarka's bond (the wrong solicitation number, the wrong opening date, an inaccurate project identification, and the wrong location) create significant doubt as to enforceability of this bond for this IFB. See Joseph B. Fay Co., B-241769.2, supra. In this regard, the mere presence of a superseded bid date and a similar project description are not sufficient to overcome the absence of a proper solicitation number on a bid bond so as to make it enforceable. Id.

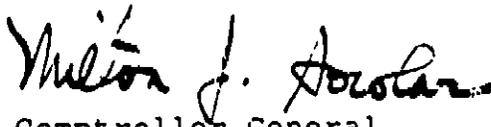
Furthermore, the fact that both the Baidarka bid and the bond were enclosed in a single envelope and that agency officials may have understood the bond to cover this work provides no

assurance that the surety intended to be bound by this IFB. Id. Likewise, the surety's assertion after bid opening that the errors on the bond were clerical and that it intended to be bound by the bond may not be considered because a bid's responsiveness must be determined from bid documents at the time of bid opening. Blakelee Inc., B-239794, supra; Kinetic Builders, Inc., 65 Comp. Gen. 871 (1986), 86-2 CPD ¶ 342; A&A Roofing Co., Inc., B-219645, supra.

Since there was uncertainty at the time of bid opening as to whether the bid bond was enforceable, the contracting officer acted properly in rejecting Baidarka's bid and in making award to Grafton McClintock. Kinetic Builders, Inc., 65 Comp. Gen. 871, supra. Conversely, the agency improperly reversed the contracting officer's determination in this case.

We sustain the protest.

We recommend that the award to Grafton McClintock be reinstated. Under the circumstances, Grafton McClintock is entitled to recover the costs of filing and pursuing its protest. Bid Protest Regulations, 4 C.F.R. § 21.6(d) (1991).

for 
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