



Comptroller General  
of the United States  
Washington, D.C. 20548

Sklarew  
1435860

## Decision

**Matter of:** U.S. General, Inc.

**File:** B-242769

**Date:** May 10, 1991

Robert F. Babcock, Esq., Walstad & Babcock, for the protester.  
Lyle M. Ishida, Esq., Case & Lynch, for Concrete Coring  
Company of Hawaii, an interested party.  
Jeffrey A. Wayne, Esq., and Paul M. Fisher, Esq., Department  
of the Navy, for the agency.  
Christina Sklarew, Esq., Andrew T. Pogany, Esq., and  
Michael R. Golden, Esq., Office of the General Counsel, GAO,  
participated in the preparation of the decision.

### DIGEST

A bid bond that references an incorrect solicitation number and incorrect bid opening date is materially defective in the absence of other objective evidence to clearly establish 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.

### DECISION

U.S. General, Inc. protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. N62471-89-B-2370, issued by the Department of the Navy for wharf repairs at the Naval Station, Ford Island, Pearl Harbor, Hawaii. U.S. General's bid was rejected because the accompanying bid bond listed a different solicitation number from the IFB under which it was submitted.

We deny the protest.

The IFB required the submission of a bid bond or other suitable bid guarantee in the amount of 20 percent of the largest amount for which award could be made under the bid submitted. The solicitation was originally issued with a bid opening date of December 20, 1990, but was later amended; the final amendment changed the bid opening date to January 8, 1991. Of the eight bids received by that date, U.S. General's was the apparent low bid.

U.S. General's bid was accompanied by a bid bond that referenced another solicitation in the "Invitation No." block on Standard Form (SF) 24, the bond form. Instead of correctly listing N62471-89-B-2370, the bond listed DACA05-91-B-0007 as the IFB number. In addition to this error, the "Bid Date" block contained the date that was originally set for bid opening, December 20, instead of the date scheduled by the last amendment (when bid opening actually occurred), January 8. In the block used to identify the project, labeled "For (Construction, Supplies or Services)," the protester's bond listed "Pearl Harbor Naval Station" instead of correctly identifying the work as "Repair Wharf F1, Naval Station Ford Island, Pearl Harbor, Oahu, Hawaii."

The Navy determined that U.S. General's bond was defective because it did not clearly identify the solicitation, and rejected the firm's bid as nonresponsive.

U.S. General argues that the agency's doubts about the enforceability of the bond are unreasonable because "the facts, when taken as a whole, do not allow for any reasonable basis for confusion as to which job was intended to be bonded. If one were confused, it would only be because he had not made a careful review of the publicly available information." The protester refers to the fact that the firm had not submitted a bid on other projects, had not requested a bid bond for other projects, and that the amount of the bid bond was in line with bids received for the intended solicitation and not in line with bids submitted by other bidders for other projects that were being bid in Pearl Harbor on that date.

The purpose of a bid bond is to assure that a bidder will not withdraw its bid within the time specified for acceptance; it secures the liability of a surety to the government in the event the bidder fails to fulfill its obligations. Hydro-Dredge Corp., B-214408, Apr. 9, 1984, 84-1 CPD ¶ 400. Thus, the sufficiency of the bid bond will depend on whether the surety is clearly bound by its terms; when the liability of the surety is not clear, the bond properly may be regarded as defective. Id. When required, a bid bond is a material part of a bid and must therefore be furnished with the bid. Baucom Janitorial Serv., Inc., B-206353, Apr. 19, 1982, 82-1 CPD ¶ 356. When a bidder supplies a defective bond, the bid itself is rendered defective and must be rejected as non-responsive. Truesdale Constr. Co., Inc., B-218094, Nov. 18, 1983, 83-2 CPD ¶ 591. As with other matters relating to the responsiveness of a bid, the determination as to whether a bid bond is acceptable must be based solely on the bid documents themselves as they appear at the time of bid opening. See Central Mechanical, Inc., 61 Comp. Gen. 566 (1982), 82-2 CPD ¶ 150.

Although the protester asserts that its intention was for the bond to support its bid under IFB No. N62471-89-B-2370 and for the surety to be bound thereby, and asserts that it neither submitted a bid nor ever intended to submit a bid under the IFB number that was referenced on the bond form, it is not the bidder's intent that controls. The relevant inquiry, rather, is whether the surety's obligation has been objectively manifested on the bidding documents so that the extent and character of its liability is clearly ascertainable therefrom. Allen County Builders Supply, 64 Comp. Gen. 505 (1985), 85-1 CPD ¶ 507.

U.S. General correctly points out that the question of whether a bid bond is acceptable even if it cites an incorrect solicitation number depends on the circumstances involved. Where there are clear indicia on the face of the bond to identify it with the correct solicitation, the bond is generally acceptable. In such cases, the incorrect solicitation number is merely a technical defect which does not affect the enforceability of the bond. See Blakelee Inc., B-239794, July 23, 1990, 90-2 CPD ¶ 65. On the other hand, however, where there is an absence of other objective evidence on the bond to clearly establish at the time of bid opening that the bond was intended to cover the bid for which it was actually submitted, it is materially defective. If uncertainty exists that a bond is enforceable by the government by the surety, the bond is unacceptable and the bid must be rejected as nonresponsive. Id.

Here, none of the information blocks on the bond form contained information that would objectively link this bond with the solicitation for which U.S. General allegedly submitted it. In the "Penal Sum of Bond" block, the bid bond penalty amount could be expressed either as a fixed sum or as a percentage of the total bid price. The IFB required a bond that was equal to 20 percent of the bid amount. In the block provided for indicating the percent of the bid price, the protester's surety had inserted "20." However, in the block used to indicate the maximum amount of the bond, the surety had listed \$1,495,000.<sup>1/</sup> U.S. General's bid was for \$867,000. In the "Bid Date" block, the bond listed 12-20-90, instead of the actual bid opening date of 1-08-91. In the blocks

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<sup>1/</sup> The "not to exceed" amount further clouds the enforceability of the bond, since the surety's attorney-in-fact who executed the bond was only authorized to execute bonds in the amount of \$299,000. While the protester argues that this amount is 20 percent of the "not to exceed" amount of \$1,495,000, the fact remains that the bond's express maximum amount was the full sum of \$1,495,000.

provided for "Bid Identification," the surety had listed "Pearl Harbor Naval Station," instead of "Repair Wharf F1 Naval Station Ford Island, Pearl Harbor, Oahu, Hawaii."

The question presented in cases where bonds do not comply with invitation requirements is whether the government obtains the same protection in all material respects under the bond actually submitted as it would under a bond complying with the requirement. See Allen County Builders Supply, 64 Comp. Gen. 505, supra. Where it is unclear from the face of the bond whether the bond was intended to cover the IFB under which it was submitted, the enforceability of the bond is unclear, and the same protection simply is not afforded as would be provided by a properly completed bond. Accordingly, we conclude that the bid bond was defective here, and that the agency was required to reject U.S. General's bid as nonresponsive.

The protest is denied.



*for* James F. Hinchman  
General Counsel