



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Hugo Key & Son, Inc.

File: B-245227

Date: August 22, 1991

Kevin P. Gavin, Esq., Nadeau & Gavin, P.C., for the protester.
Aldo A. Benejam, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

1. Agency properly rejected bid as nonresponsive where bidder submitted a bid bond containing only a reproduction of the surety's signature affixed to the bond by a rubber stamp, since the lack of the surety's original signature cast doubt on the enforceability of the bond.
2. Since responsiveness cannot be established after bid opening, defective bid bond which rendered bid nonresponsive cannot be cured by the bidder's offer to submit a substitute bond subsequent to bid opening, or by the bidder's post-bid opening assurances that it would provide required payment and performance bonds "within 48 hours" following rejection of its bid.

DECISION

Hugo Key & Son, Inc. protests the rejection of its apparent low bid as nonresponsive and the award of a contract to Hammit Corporation under invitation for bids (IFB) No. N62472-90-B-0341, issued by the Department of the Navy for sanitary system repairs at the Naval Communications Unit in Cutler, Maine. The Navy rejected the protester's bid as nonresponsive because, with its bid, Key submitted a bid bond which contained only a reproduction of the surety's signature affixed to the bond by rubber-stamp, rather than the surety's original signature.

We summarily dismiss the protest without first obtaining an administrative report from the contracting agency because it does not state a valid basis for protest. See 56 Fed. Reg. 3,759 (1991) (to be codified at 4 C.F.R. § 21.3(m)).

Key asserts that the "facsimile signature" on the bond did not render Key's bid defective; that it has the same legal effect as an original signature; and that any defect resulting from the rubber-stamped signature should be considered a minor, technical irregularity, which did not require rejection of its bid. Key also states that following bid opening, Key informed the Navy that it was "ready, willing and able to provide a substitute bid bond or, if necessary, the payment and performance bonds required under the [IFB], within 48 hours."

A bid bond is a form of security submitted to assure the government that a successful bidder will not withdraw its bid within the period specified for acceptance and, if required, will execute a written contract and furnish performance and payment bonds. See Federal Acquisition Regulation (FAR) § 28.001. The purpose of a bid guarantee is to secure the liability to the government for excess procurement costs in the event the successful bidder defaults by failing to execute the necessary contractual documents or to furnish the required payment and performance bonds. See FAR § 52.228-1(c); Imperial Maintenance, Inc., B-224257, Jan. 8, 1987, 87-1 CPD ¶ 34.

The determinative question concerning the acceptability of a bid bond is 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. 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 would be bound, the bid is nonresponsive and must be rejected. Id.

We have held that photocopies or facsimiles (electronically transmitted copies) of a bid bond are not acceptable because they leave doubt as to whether the surety agreed to the terms of the bond. G & A Gen. Contractors, B-236181, Oct. 4, 1989, 89-2 CPD ¶ 308. The bid bond here, which contains only a reproduction of the surety's signature affixed on the bond by rubber-stamp, is subject to the same uncertainty. The contracting officer thus reasonably determined that the rubber-stamp signature cast doubt on the liability of the surety, rendering the bond defective, and properly rejected Key's bid as nonresponsive.^{1/}

^{1/} In an analogous area, FAR authorizes the use of typewritten and rubber-stamp signatures on bids, but only if the bidder, prior to bid opening, has authorized the use of such signatures, submits evidence of such authorization, and the bid contains such a signature. See FAR § 14.405(c)(2).

(continued...)

Since the determination as to whether a bid and the accompanying bond is acceptable must be based solely on the documents themselves as they appear at the time of the bid opening, the fact that Key could later provide a substitute bid bond does not change the result here. Bird Constr., B-240002; B-240002.2, Sept. 19, 1990, 90-2 CPD ¶ 234. Key would otherwise have the option of accepting or rejecting the award by either correcting or not correcting the bond deficiency after bid opening, which is inconsistent with the sealed bid system. See Contract Servs. Co., Inc.--Recon., B-226774.4, May 6, 1988, 88-1 CPD ¶ 441. Similarly, the fact that Key gave the Navy assurances that it would provide the required payment and performance bonds "within 48 hours" could not properly be accepted in place of the defective bid bond; post-bid opening explanations may not be used to cure a defective bond. Bird Constr., B-240002; B-240002.2, supra.

The protest is dismissed.

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1/ (...continued)

Where a bidder signed its bid with a rubber-stamp signature, for example, but failed to provide evidence prior to bid opening that the bidder had authorized the use of a rubber-stamp signature, the bid was properly rejected as nonresponsive. A & E Indus., Inc., B-239846, May 31, 1990, 90-1 CPD ¶ 527. Even assuming that a similar approach could be used to determine whether a surety agreed to be bound by authorizing the use of a rubber-stamp signature on a bond, Key provided no such evidence prior to bid opening.