



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

Decision

Matter of: Alarm Control Company

File: B-246010

Date: November 18, 1991

Scott H. Naegle for the protester.
Gregory H. Petkoff, Esq., Department of the Air Force, for
the agency.
Paula A. Williams, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Where commercial bid bond limits the surety's obligation to the difference between the amount of the awardee's bid and the amount of a procurement contract, the terms of the commercial bond represent a significant departure from the rights and obligations of the parties as set forth in the solicitation, which renders the bid bond deficient and the bid nonresponsive.

DECISION

Alarm Control Company protests the rejection of its low bid under invitation for bids (IFB) No. F04684-91-B-0035, issued by the Department of the Air Force to replace a fire alarm system and upgrade a sprinkler system at Vandenberg Air Force Base. The Air Force rejected the bid because it determined that the commercial bid bond submitted by Alarm was defective. Alarm contends that the defect was immaterial and should be waived as a minor informality.

Where it is clear from the face of a protest that it does not establish a basis for challenging the agency's action, we dismiss the protest without obtaining an agency report. See 4 C.F.R. § 21.3(m) (1991).

The IFB required bidders to submit a bid guarantee with their bids. A bid guarantee ensures that a bidder will not withdraw its bid within the time specified for acceptance and, if required, will execute a written contract and

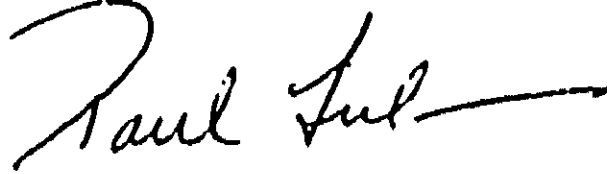
furnish performance and payment bonds. When the guarantee is in the form of a bid bond, it ensures the liability of the surety to the government if the holder of the bond fails to fulfill these obligations. Tolman Bldg. Maintenance, B-243654, Apr. 29, 1991, 91-1 CPD ¶ 422. A bidder's use of a commercial bid bond form rather than the standard government form is not per se objectionable, since the sufficiency of the bond does not depend on its form, but on whether it represents a significant departure from the rights and obligations of the parties as set forth in the solicitation. Eagle Asphalt & Oil Co., Inc., B-240340; B-240344, Nov. 14, 1990, 90-2 CPD ¶ 395.

Here, the IFB incorporates by reference and requires the submission of a Standard Form 24 bond, which permits the government to recover "any costs." We have held that this language requires that the guarantee be available to offset the cost of reprourement of the goods or services in question. See Kiewit Western Co., 65 Comp. Gen. 54 (1985), 85-2 CPD ¶ 497. As Alarm recognizes, the commercial bid bond form furnished by its surety limits the obligations required under the IFB as the bond expressly limits the surety's liability to the difference, not to exceed the penalty amount, between the amount of Alarm's bid and the amount contracted for with another party to perform the same work. Thus, Alarm's surety's liability does not extend to cover either recoupment of administrative costs of reprourement or in-house performance, as is required. A commercial bid bond such as the one submitted by Alarm, which merely permits the government to recover the difference in prices, is defective as it provides the government with less than the required protection. See W.R.M. Constr., Inc., 69 Comp. Gen. 715 (1990), 90-2 CPD ¶ 227. Thus, the agency properly rejected Alarm's bid as nonresponsive.

The protester argues that the administrative costs of reprourement "would be no more than \$100" and the difference between its bid price and that of the next lowest bidder is \$200,000; therefore, the deviation should be treated as cured by operation of law or waived as a minor informality pursuant to Federal Acquisition Regulation (FAR) § 14.405. We disagree. FAR § 14.405 permits waiver with respect to an immaterial defect in a bid which can be corrected or waived without being prejudicial to other bidders. As discussed above, Alarm's inadequate bid bond constitutes a material defect, not a minor informality. Accordingly, when a bid is properly rejected as nonresponsive based on an inadequate bid bond, the bond

deficiency may not be waived or corrected after bid opening because of possible monetary savings to the government, because the importance of preserving the integrity of the competitive bidding system outweighs the possible monetary savings. Tolman Bldg. Maintenance, supra.

The protest is dismissed.

A handwritten signature in cursive script, appearing to read "Paul I. Lieberman", with a long horizontal flourish extending to the right.

Paul I. Lieberman
Assistant General Counsel