



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Martina Enterprises/Tom Swenson General
Contractors

File: B-250766

Date: October 21, 1992

Wayne DeGusseme for the protester.
Christine F. Bednarz, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Bid of a joint venture, which submitted a bid bond in the name of only one of the corporations forming the joint venture, is nonresponsive.

DECISION

Martina Enterprises/Tom Swenson General Contractors (Martina) protests the rejection of its bid under invitation for bids (IFB) No. N68711-90-B-1094, issued by the Department of the Navy, Naval Facilities Engineering Command, for roof repairs at the San Luis Rey Officers Club, Camp Pendleton, California. The Navy determined that Martina's bid was nonresponsive because there was a discrepancy between the legal entity shown on the bid and the legal entity shown on the bid bond.

We dismiss the protest.

The IFB, issued on July 27, 1992, required a bid guarantee in the form of a bid bond in the amount of 20 percent of the bid. Martina, the apparent low bidder at \$431,118, identified itself in the bid form as "Martina/Swenson JV"; this name also appears consistently in the representations and certifications accompanying the bid. Furthermore, under both the "Type of Business Organization" and "Taxpayer Identification" certifications, Martina represented that it was a joint venture. Tom Swenson, the joint venture's partner, signed the bid.

The accompanying bid bond identified its principal as "Martina Enterprises (U.S.) Inc. dba: Martina Mechanical Enterprises (U.S.) Inc." The principal was identified as a "corporation" under the "Type of Organization" section of the bid bond. There is no signature appearing in the principal's signature block of the bid bond.

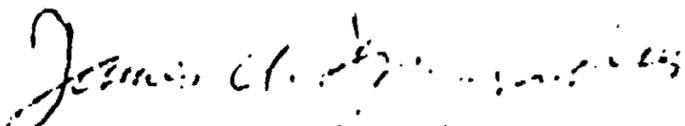
By letter dated September 25, 1992, the contracting officer notified Martina that its bid was nonresponsive because of a deficiency in its bid bond. The Navy awarded the contract to the next low bidder, Centigrade, Inc. at \$440,670.

The sufficiency of a bid bond relates to whether the government will receive full and complete protection in the event that the bidder fails to execute the required contract documents and deliver the required performance and payment bonds. A.D. Roe Co., Inc., 54 Comp. Gen. 271 (1974), 74-1 CPD ¶ 194. Among other things, the terms of the bid bond must clearly establish the liability of the surety at the time of bid opening. Design for Health, Inc., 69 Comp. Gen. 712 (1990), 90-2 CPD ¶ 213. A surety does not incur a liability to pay the debts of another unless he expressly agrees to be bound. Mount Diablo Corp., Inc., B-228193, Nov. 10, 1987, 87-2 CPD ¶ 475. For this reason, the principal listed on the bid bond must be the same as the nominal bidder. If the bid bond names a principal different from the nominal bidder, it is deficient and may not be corrected after bid opening as a minor informality. A.D. Roe Co., Inc., supra.

In the present case, the surety's liability under the bid bond is contingent upon the bid being in the name of the corporation listed on the bid bond, i.e., "Martina Enterprises (U.S.) Inc. dba: Martina Mechanical Enterprises (U.S.) Inc." Because "Martina/Swenson JV" is the nominal bidder here, we are unable to conclude that the surety would necessarily be bound in the event that the joint venture failed to execute the contract upon acceptance of its bid or decline acceptable performance or payment bonds. See A.D. Roe Co., Inc., supra.

Martina notes that, in the above cited cases, the nominal bidder was a corporation and the principal listed in the bid bond was a joint venture, while, in Martina's own bid, the nominal bidder is the joint venture and the principal listed in the bid bond, the corporation. This is a distinction without consequence, because the surety's liability depends upon the identity in legal entity of both the bidder and the bid bond principal.

The protest is dismissed.


James A. Spangenberg
Assistant General Counsel