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McAuliffe



Comptroller General
of the United States

(Corrected Copy)

Washington, D.C. 20548

Decision

Matter of: Gem Engineering Company

File: B-251644

Date: March 29, 1993

Tahsin Gurpinar and Todd McCombs for the protester,
Robert C. Birkett for S.G. Communications, an interested
party.

Howard B. Rein, Esq., Paul M. Fisher, Esq., and Garrett L.
Ressing, Esq., Department of the Navy, Naval Facilities
Engineering Command, for the agency.

Susan K. McAuliffe, Esq., and Michael R. Golden, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Agency reasonably terminated apparent second low bidder's
improperly awarded contract since acceptance of apparent low
bid was warranted; despite different bidder names on
apparent low bid and bid bond, public information available
at, but obtained, after bid opening confirmed that the
different names identified same legal entity.

DECISION

Gem Engineering Company protests the Department of the
Navy's termination for convenience of the firm's contract
under invitation for bids (IFB) No. N62472-92-B-0409 to
repair guy cables at the Naval Communications Unit, Cutler,
Maine. Gem submitted the apparent second low bid and was
awarded the contract after the agency rejected the apparent
low bid, submitted by Stainless Construction Company, due to
a discrepancy between that bidder's name on its bid and its
bid bond. Gem challenges the agency's determinations that
the award to Gem was improper and that award to Stainless on
the basis of its apparent low bid is proper.

We deny the protest.

The bid and bid bond submitted by the apparent low bidder at
the September 15 bid opening identified different corporate
names. The Standard Form 1442, the cover page of the bid,
identified the bidder as "Satinless" Construction Company

located at a Tucson, Arizona address. The bid bond identified the principal as Stainless Construction Company, Inc. d/b/a/ S.G. Communications at the same Arizona address. The bid elsewhere identified the bidder as Stainless Construction Company, incorporated under the laws of the State of Pennsylvania. The contracting officer contacted Stainless after bid opening to confirm whether Stainless and S.G. Communications were the same firm. A member of Stainless's clerical staff was unable to provide that confirmation. The contracting officer thereafter rejected the bid as nonresponsive. Award was made to Gem, the apparent second low bidder at bid opening.

Additional information was submitted by Stainless shortly after bid opening and award, but prior to the start of performance, to show that the principal named in the bid bond was the same entity identified in the bid. This information included copies of Stainless's certificate of incorporation in Pennsylvania, a Dunn & Bradstreet report, and the firm's Pennsylvania fictitious name registration showing that S.G. Communications was not a separate corporation but rather a registered fictitious name for Stainless. Based upon its review of this information, the agency determined that Stainless's bid had been improperly rejected since the names on the firm's bid and bid bond identified the same legal entity. Finding that the award to Gem was made in error, the agency terminated Gem's contract for the convenience of the government and awarded the contract to Stainless. This protest followed.

Our Office generally does not review an agency's decision to terminate a contract for the convenience of the government since that is a matter of contract administration which is not within our bid protest function. However, we will review such a termination where, as here, it is based upon an agency determination that the initial contract award was improper. See, e.g., Tritex Corp., B-247675.2, Aug. 6, 1992, 92-2 CPD ¶ 82. As discussed below, we think the agency's termination of the protester's contract prior to the start of performance was proper corrective action by the Navy in light of the agency's reasonable determination that Stainless's bid had been wrongfully rejected.

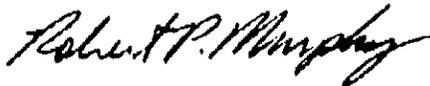
Generally, a bid bond which names a principal different from the nominal bidder is deficient and that defect may not be waived as a minor informality. The bid must be rejected unless it can be established that the different names identify the same entity. This is based on the rule of suretyship that no one incurs a liability to pay the debts of another unless he expressly agrees to be bound. See The Scotsman Group, Inc., B-245634, Jan. 13, 1992, 92-1 CPD ¶ 57; C.W.C. Assocs., Inc., and Chianelli Contracting Co., 68 Comp. Gen. 164 (1988), 88-2 CPD ¶ 612. Information

demonstrating that the named bidder and the principal named on the bid bond identify the same entity can be submitted after bid opening if the information was publicly available at the time of bid opening. See Jack B. Imperiale Fence Co., Inc., B-203261, Oct. 26, 1981, 81-2 CPD ¶ 339; K-W Constr., Inc., B-194460, June 29, 1979, 79-1 CPD ¶ 475.

The fictitious business name statement, incorporation certificate and Dunn & Bradstreet report, information which was publicly available prior to the bid opening, unequivocally confirm that the addition of the reference to "d/b/a S.G. Communications" in the bid bond does not affect the legal identity of the Stainless firm or the liability of the surety to the government. Since this information was publicly available at the time of bid opening, it was reasonable for the agency to consider it shortly after bid opening. See Sunrise Int'l Group, Inc., B-251956, Feb. 8, 1993, 93-1 CPD ¶ ____. On the basis of this information, we find the agency reasonably determined that Stainless's bid had been improperly rejected due to the discrepancy in the names.¹

Performance had not yet started under Gem's contract and the agency determined termination of the improperly awarded contract would not adversely affect the agency's mission. Therefore, we have no reason to question the agency's determination that termination of the protester's contract was appropriate corrective action which would preserve the integrity of the competitive bidding process. See, e.g., GAI, Inc., B-247962; B-247971, July 8, 1992, 92-2 CPD ¶ 10.

Accordingly, the protest is denied.



for James F. Hinchman
General Counsel

¹The agency concedes that the discrepancy between the name "Satinless" on the Standard Form 1442 and the identification of "Stainless" on the bid bond and numerous certifications in the firm's bid was the result of a mere typing error which alone did not cause the agency to question the identity of the bidder.