



Comptroller General
of the United States

1203110

Washington, D.C. 20548

Decision

Matter of: Goss Fire Protection, Inc.

File: B-253036

Date: August 13, 1993

Phillip E. Johnson for the protester.
William E. Thomas, Jr., Esq., Department of Veterans
Affairs, for the agency.
James A. Spangenberg, Esq., Office of General Counsel, GAO,
participated in the preparation of the decision.

Digest

1. There is no ambiguity in the identity of the bidder identified in the bid as a division of a Delaware corporation with the same tax identification number as the Delaware parent corporation, notwithstanding that there is an inactive Ohio corporation with the same name that was not referenced in the bid.
2. There is no discrepancy between the nominal bidder and the bid bond principal justifying the rejection of the bid as nonresponsive where both the bid and bid bond entities are identified as a division or a company of a Delaware corporation, and there is no other legal entity that could reasonably be considered the bid bond principal.
3. A bidder may submit evidence establishing the authority of an individual to sign a bid after bid opening.

Decision

Goss Fire Protection, Inc. protests the award of a contract for the installation of a fire protection system to "Automatic" Sprinkler Corporation of America under invitation for bids (IFB) No. 405-1-93, issued by the Department of Veteran Affairs (VA) Medical Center, White River Junction, Vermont. The protester claims that Automatic's bid is nonresponsive.

We deny the protest.

The solicitation for the installation of a sprinkler system in Building No. 1 of the VA Medical Center required each bidder to submit an adequate bid bond. The bids were opened on February 11, 1993. Automatic submitted the low bid of

\$324,616 and Goss the second low bid of \$434,547. Award was made to Automatic.

The documents in Automatic's bid identify the nominal bidder as "Automatic" Sprinkler Corp. of America, a division of Figgie International, Inc., with an address in South Portland, Maine. The bid bond principal is listed as "Automatic" Sprinkler Corp. of America, a Figgie International Company with an address in Cleveland, Ohio. On the bid bond and in the bid, the bidder identifies itself as a Delaware corporation. The bid also lists "Figgie International" as the common parent with the same Taxpayer Identification Number (TIN) as Automatic. Figgie has advised the agency that it is bound to the bid, inasmuch as Automatic is an unincorporated division of Figgie with no independent legal status.

The protester asserts that the identity of the bidder is unclear and that there are certain discrepancies between the bid and the bid bond, and that the bid should therefore be rejected. That is, although the bid was apparently submitted in the name of Automatic, a division of Figgie, a Delaware corporation, the protester has provided evidence of a corporation with Automatic's name incorporated under the laws of the state of Ohio, which is licensed to conduct business in Maine and Delaware as a foreign corporation from Ohio. The protester provides evidence that: (1) the State of Ohio certifies "Automatic" Sprinkler Corporation of America's incorporation on July 18, 1969, with its principal location in Cleveland, most recently renewing its business license on June 1, 1993, and (2) Automatic is an Ohio corporation duly qualified under the laws of Maine to transact business as a foreign corporation with application for the business license originally filed on August 8, 1969, most recently renewed on May 27, 1993. Goss asserts that it is therefore not clear what entity was bound to the bid, Automatic or Figgie, or that the principal identified in the bid bond is necessarily the same entity as the nominal bidder, since Automatic is a separate corporate entity from Figgie.

Uncertainty as to the identity of the bidder is a circumstance that renders a bid nonresponsive since the bidder potentially could avoid the obligation to perform the contract because of the ambiguity. Sunrise Int'l Group, Inc.; Eagle III Knoxville, Inc., B-252735; B-252735.2, July 27, 1993, 93-2 CPD ¶ ____; Cline Enters., Inc., B-252407, June 24, 1993, 93-1 CPD ¶ ____. Even where separate entities may appear in the same bid, acceptance of the bid is proper where it is possible to sufficiently identify the actual bidder so that it would not be able to avoid the obligation of the bid. Cline Enters., Inc., supra.

In response to the agency's query, Figgie has provided an affidavit stating that: (1) the bid was submitted by Figgie through its Automatic division's branch office in South Portland, Maine; (2) the contract award is binding on Figgie and "Figgie is and has been at all times ready, able and willing to commence and complete the above-referenced contract"; (3) Figgie is incorporated under the laws of Delaware with its principal place of business in Willoughby, Ohio; (4) Automatic is an unincorporated division of Figgie with a principal place of business located in Broadview Heights, Ohio, with no legal status of its own; (5) the Ohio corporation licensed as "Automatic" Sprinkler Corporation of America is a wholly owned subsidiary of Figgie "incorporated to protect the interest of the 'Automatic' name in the State of Ohio by preventing other entities from incorporating under that name when 'Automatic' began operating as a division of Figgie"; and (6) "'Automatic', the Ohio corporation, is and has been for several years, an inactive nameholder corporation, which conducts no business and did not bid on the above-referenced contract." In addition, Figgie has provided its organizational chart showing that Automatic operates as a division of Figgie. It also has supplied Figgie's tax returns for 1992 and 1993, which substantiate that Automatic is part of Figgie, as well as the tax returns of Automatic, the Ohio corporation, which show that it is an inactive corporation with no assets or income. Finally, Figgie has furnished a copy of an Ohio franchise tax report that shows that Automatic is an inactive corporation with no assets or liabilities.

Automatic's bid is entirely consistent with Figgie's explanation and we find no ambiguity as to what entity is bound to the bid. The bidder is clearly identified as a Delaware corporation, not a Ohio corporation. Automatic's status is clearly identified as a "division" of Figgie, and the bid identifies the bidding entity's TIN as the same as Figgie. With the other evidence supplied by Figgie that clearly demonstrates that Automatic, the division of Figgie, is the bidding entity, and that the Ohio corporation cannot be that entity, we find no ambiguity as to the identity of the bidder.

'A second affidavit a Figgie official attests that:

Figgie has a wholly owned subsidiary known as "Automatic" Sprinkler Corporation of America, an Ohio corporation. This corporation is an inactive corporate shell. It conducts no business, has no employees and has no assets. Its only function is to hold and protect the trade name "Automatic" Sprinkler Corporation of America. The Ohio corporation did not bid on the contract in question.

As noted above, Goss also contends that the fact that there is a separate legal entity named Automatic, an Ohio corporation affiliated with Figgie, clouds the question of whether the bid bond principal is the same as the nominal bidder. In other words, Goss argues that the bid bond principal could be argued to be Automatic, the Ohio corporation, while the nominal bidder is Figgie, and the bid bond surety cannot be said to be clearly bound to the bid of what is possibly a different legal entity.

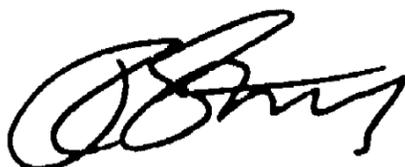
The submission of a bid bond is a material element of a bid which affects its acceptability. If uncertainty exists as to whether the bidder has furnished a legally binding bond at the time of bid opening, the bond is unacceptable and the bid must be rejected as nonresponsive. The rule is derived from the rule of suretyship which states that the liability to pay the debts of another cannot be incurred unless there is an express agreement to be bound. Design for Health, Inc., 69 Comp. Gen. 712 (1990), 90-2 CPD ¶ 213; Reliable Elec. Constr., Inc., B-250092, Sept. 23, 1992, 92-2 CPD ¶ 198. The name of the bidding entity need not be identical to that on the bond so long as it can be established that there is no discrepancy between the legal entity named on each. Maitland Bros. Co., B-233871, Mar. 6, 1989, 89-1 CPD ¶ 244; General Elec. Co.; Westinghouse Elec. Corp., 67 Comp. Gen. 179 (1988), 88-1 CPD ¶ 6.

Here, we find no ambiguity regarding the bid bond principal and find that it is the same as the nominal bidder, the Automatic division of Figgie, and there is therefore no question regarding the surety's liability under the bid bond. The designation of the bid bond principal as "Automatic" Sprinkler Corp. of America, a Figgie International Company, while not stating that Automatic is a division of Figgie, is not inconsistent with the identification of Automatic as a division of Figgie. While, as discussed above, there are two entities using the Automatic name--one an operating unit of Figgie and the other an Ohio corporation--the bid bond states that the bid bond principal is a Delaware corporation like the bidder; neither the bid nor bid bond reference an Ohio corporation. It is also notable that the individual executing the bid bond on behalf of Automatic, the bid bond principal, as the principal's Assistant Secretary, is the same individual who executed the Certificate of Procurement Integrity and other documents included in the bid as Assistant Secretary for the Automatic division of Figgie. Since the Automatic entity bound by the bid bond is an operating unit of Figgie and the same legal entity as submitted the bid, there is no discrepancy between the bond principal and nominal bidder that puts into question the bid bond surety's liability. General Elec. Co.; Westinghouse Elec. Corp., supra.

The protester finally argues that the bid was not signed by an individual authorized to bind Automatic or Figgie to the contract. In this regard, a Standard Form 129, which listed those individuals authorized to sign offers, was submitted with Automatic's bid, and that form did not list the individual who actually executed Automatic's bid.

We have long held that bidders may submit evidence establishing the authority of an individual to sign a bid after bid opening. 49 Comp. Gen. 527 (1970); Alpha O, Inc., B-234403.2, Oct. 31, 1989, 89-2 CPD ¶ 401. Here, Figgie has submitted an affidavit from its Assistant Secretary stating that it is Figgie's informal policy with respect to its Automatic division that district managers and district contractor's representatives have the authority to enter into contracts and bind Figgie, and that the individual signing the bid was Automatic's South Portland's district contractor representative who could and did bind Figgie to the bid. While Goss characterizes Figgie's offer of proof as self-serving, we think the affidavit under oath from a cognizant Figgie official is adequate evidence that the individual executing the bid had the authority to bind Automatic/Figgie as of bid opening, notwithstanding that there was no formal documentation of this person's actual authority dated prior bid opening. See Alpha O, Inc., supra; see also Schmidt Eng'g & Equip., Inc.; Defense Logistics Agency--Recon., B-250480.2; B-250480.3, June 18, 1993, 93-1 CPD ¶ ____.

The protest is denied.



James F. Hinchman
General Counsel

