



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

## Decision

Matter of: Star Brite Construction Co., Inc.

File: B-255206

Date: February 8, 1994

Kostas Smilios for the protester.  
Fredric L. Shenkman, Esq., Goldenberg, Mackler & Sayegh, for  
Iannucci & Son Construction Co., Inc., an interested party.  
John R. McCraw, Esq., Department of Transportation, for the  
agency.  
Katherine I. Riback, Esq., and James Spangenberg, Esq.,  
Office of the General Counsel, GAO, participated in the  
preparation of the decision.

### DIGEST

Bid for roof replacement, including asbestos removal and disposal, was properly rejected as nonresponsive where required bid bond included a notation that stated the bond was void if the contract work included the removal of asbestos materials.

### DECISION

Star Brite Construction Co., Inc. protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. DTFA03-93-B-00012, issued by the Federal Aviation Administration (FAA), Department of Transportation.

We deny the protest.

The IFB was issued on August 10, 1993, soliciting bids for reroofing a portion of a hangar building. The IFB included the requirement that the contractor remove and dispose of asbestos in the roof flashing. The IFB required submission of a bid guarantee in the amount of 20 percent of the bid price.

The agency received eight bids by the September 9 bid opening date. Star Brite, which submitted the low bid, included the following statement on its Standard Form 24 bid bond: "[i]f this contract includes the removal of asbestos materials, then this bond is to be null and void."

The contracting officer determined that Star Brite's bid was nonresponsive because a valid bid bond was required by the solicitation and, according to the statement included with

its bid, Star Brite's bid bond was void because the project required, among other things, that the contractor remove and dispose of materials that contain asbestos. On September 29, Iannucci & Son Construction Co., Inc. was awarded the contract.

Star Brite contends that the notation on its bid bond was not a material defect that would render its bid nonresponsive.<sup>1</sup>

A bid bond assures that a bidder will, if required, execute a written contract and furnish payment and performance bonds. Hugo Key & Son, Inc., B-245227, Aug. 22, 1991, 91-2 CPD ¶ 189. The surety's bid bond obligations are satisfied when acceptable payment and performance bonds are delivered and the bidder executes the contract. Hydro-Dredge Corp., B-214408, Apr. 9, 1984, 84-1 CPD ¶ 400. The determinative question as to the acceptability of a bid bond is whether the bid documents establish that the bond is enforceable against the surety should the bidder fail to meet its obligations. Fred Winegar, B-243557, Aug. 1, 1991, 91-2 CPD ¶ 111. 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. Hugo Key & Son, Inc., supra.

In our view, the agency properly rejected Star Brite's bid as nonresponsive since the notation included with its bid bond stated that it was "null and void" if the IFB involved the removal of asbestos materials--work which in fact was required under the IFB. LM Envt'l, Inc., B-245388.3, June 30, 1992, 94-1 CPD ¶ \_\_\_\_; Curry Envt'l. Servs., Inc., B-228214, Dec. 9, 1987, 87-2 CPD ¶ 570; Summit Constr. Co., B-227491.2, Sept. 14, 1987, 87-2 CPD ¶ 244. Any post-bid opening assurances by Star Brite's bonding company cannot serve to make Star Brite's defective bid responsive, since the determination as to whether a bid is responsive and a bid bond is acceptable must be based solely on the documents themselves as they appear at the time of bid opening. Hugo Key & Son, Inc., supra.

Finally, Star Brite protests the agency's delay in notifying Star Brite that its bid was nonresponsive. However, this deficiency does not affect the validity of the rejection of

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<sup>1</sup>In a telephone conference call held after bid opening, Star Brite's bonding company stated that the qualifying statement was erroneously included on the face of the bid bond and that it would issue the required performance and payment bonds within 10 days of award.

the bid. K & M Elec. Corp., B-247450, Apr. 23, 1992, 92-1  
CPD ¶ 387.

The protest is denied.

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for Robert P. Murphy  
Acting General Counsel