



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Kinsmen Corporation

**File:** B-257830

**Date:** August 4, 1994

### DECISION

Kinsmen Corporation protests the rejection of its bid under invitation for bids (IFB) No. N62472-93-B-2036, issued by the Department of the Navy for repairs to sanitary sewer lift stations.

The IFB, which opened on May 12, 1994, required the submission of a bid guarantee consisting of a valid bid bond with an attached power of attorney to bind the surety. The power of attorney submitted by Kinsmen states, "THIS POWER OF ATTORNEY EFFECTIVE ONLY IF ATTACHED TO BOND NO. 9406171." The bid bond submitted by Kinsmen contains no bond number. Accordingly, the Navy rejected the protester's bid as nonresponsive.

In its protest, Kinsmen (1) asserts that the discrepancy between the power of attorney and its bid bond is a minor informality that should be waived; and (2) attaches a July 7 letter from the agent for the surety stating that the bid bond is valid and that the surety "stands ready to execute the required performance and payment bonds" for Kinsmen.

Protests are required to set forth a detailed statement of the legal and factual grounds of protest. Bid Protest Regulations, 4 C.F.R. § 21.1(c)(4) (1994). When, on its face, a protest does not state a valid basis of protest, we will summarily dismiss the protest. 4 C.F.R. § 21.3(m). As discussed below, neither ground of protest set forth by Kinsmen constitutes a legally valid basis of protest.

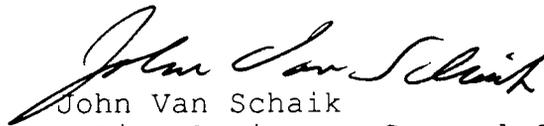
The purpose of a bid bond is to give assurance that a successful bidder will execute all necessary documents, furnish further security as required, and will not withdraw its bid within the acceptance period. Accordingly, a bid bond is a material part of the bid, and a defective bond will render a bid nonresponsive. William V. Walsh Constr., Co., Inc., B-241257, Oct. 3, 1990, 90-2 CPD ¶ 270; Techno Eng'g and Constr. Ltd., B-243932, July 23, 1991, 91-2 CPD ¶ 87. To be acceptable as a bid guarantee, a bond must clearly demonstrate that the surety will be bound by its terms. Fred Winegar, B-243557, Aug. 1, 1991, 91-2 CPD ¶ 111. The bid documents must establish that the bond is enforceable

060745/152365

against the surety should the bidder fail to meet its obligations. Where the power of attorney form accompanying the bond does not establish that the attorney-in-fact is authorized to bind the surety, the bid bond is defective and the bid is nonresponsive. Techno Eng'g and Constr., Ltd., supra.

A power of attorney is to be strictly construed. See J.W. Bateson Co., Inc., B-189848, Dec. 16, 1977, 77-2 CPD ¶ 472. We will not convert ambiguous aspects of bid bonds and powers of attorney into mere matters of form which can be explained away and waived. A.W. & Assocs., Inc., 69 Comp. Gen. 737 (1990), 90-2 CPD ¶ 254. Here, although the surety explained on July 7 that it continued to stand ready to execute required performance and payment bonds, the determination as to whether a bid and the accompanying bond are acceptable must be based solely on the documents as they appear at the time of the bid opening, and a post-bid explanation may not be used to cure a defect. The King Co., Inc., B-228489, Oct. 30, 1987, 87-2 CPD ¶ 423.

The protest is dismissed.



John Van Schaik  
Acting Assistant General Counsel