



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

Decision

Matter of: H.W. Houston Construction Company
File: B-258581
Date: February 2, 1995

Joel S. Rubinstein, Esq., Bell, Boyd & Lloyd, for the protester.
James J. Hartnett IV, Esq., Faegre & Benson, for M.A. Mortenson Co., an interested party.
Mark W. Hanson, Esq., and Lester Edelman, Esq., U.S. Army Corps of Engineers, for the agency.
Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

The contracting agency properly rejected the protester's bid bond, where the solicitation number referenced on the bond had been "whited-out" and retyped without evidence of the surety's consent and there was another ongoing procurement to which the bond could refer.

DECISION

H.W. Houston Construction Company protests the rejection of its low bid and the award of a contract to M.A. Mortenson Co., under invitation for bids (IFB) No. DACA45-94-B-0096, issued by the Omaha District of the U.S. Army Corps of Engineers for the construction of an information systems facility at Fort Carson, Colorado.

We deny the protest.

The IFB, issued July 25, 1994, by the Corps of Engineers's Omaha District, required the submission of a bid bond or other suitable bid guarantee in the amount of 20 percent of the bid and contained the standard bid guarantee clause, as set forth in Federal Acquisition Regulation § 52.228-1. At the September 8 bid opening, H.W. Houston submitted the low bid of \$8,181,000 and M.A. Mortenson the next low bid of \$8,274,931.

H.W. Houston's bid included the required bid bond. Part of the solicitation number referenced on the bid bond had been covered by white correction fluid and retyped; specifically,

the part of the solicitation number beginning after "DACA45-" was "whited-out" and retyped.¹ The solicitation number appearing on the bond correctly referenced the IFB that is the subject of this protest, and the bond provided for a penal sum of 20 percent of the bid price and correctly referenced the correct bid opening date and the solicitation requirement as construction services.

The Corps rejected H.W. Houston's bid as nonresponsive, because there was no indication in the bid that the protester's surety consented to the alteration of the solicitation number, and made award to Mortenson. This protest followed.

H.W. Houston and its surety agent state that the surety agent in typing the bid bond erroneously used the solicitation number of a 1992 solicitation issued by the Corps's Omaha District for the proposed construction of the information systems facility at Fort Carson. That solicitation (IFB No. DACA45-92-B-0009) was canceled on August 27, 1992, almost 2 years prior to this issuance of the IFB and prior to the September 8, 1994, date appearing on H.W. Houston's bid bond. The surety agent states that it authorized the alteration of the latter part of the solicitation number because there was insufficient time to prepare a new bid bond document.

The Corps states that because it is not possible to read the solicitation number originally typed on H.W. Houston's bid bond, the bid bond originally could have referenced another procurement (IFB No. DACA45-94-B-0102) for the construction of the missile alert facility at F.E. Warren Air Force Base, Wyoming, for which the Corps's Omaha District conducted bid opening later on the same day. Given this uncertainty, the agency states that it could not be assured that the surety would be bound by H.W. Houston's bond.

The submission of a required bid bond or bid guarantee is a material condition with which a bid must comply at the time of bid opening to be responsive. Blakelee Inc., B-239794, July 23, 1990, 90-2 CPD ¶ 65. The sufficiency of the bid bond depends on whether the surety is clearly bound by its terms; where the liability of the surety is not clear, the bond is defective. E&R, Inc., B-255868, Mar. 29, 1994, 94-1 CPD ¶ 218. As a general rule, a material alteration to a bid bond, without the surety's consent, discharges the surety from liability and renders the bid nonresponsive.

¹The unaltered part of the solicitation number, "DACA45," identifies the Corps's Omaha District as the office that issued the solicitation.

Montgomery Elevator Co., B-210782, Apr. 13, 1983, 83-1 CPD ¶ 400. Consequently, where, as here, there is no evidence on the face of the bid of the surety's consent, the issue of the materiality of the alteration determines the acceptability of the bid bond. Hampton Rds. Mechanical Contractors, Inc., B-257908, Nov. 23, 1994, 94-2 CPD ¶ 201; G&P Parlomas, Inc., B-226335, Apr. 27, 1987, 87-1 CPD ¶ 593.

Whether citation of an incorrect solicitation number renders the bid bond unacceptable depends upon the circumstances. Kirila Contractors, Inc., 67 Comp. Gen. 455 (1988), 88-1 CPD ¶ 554. Where there are indicia on the face of the bond that clearly identify it with the solicitation, the bond may be acceptable notwithstanding an inaccurate or altered solicitation number. In that case, the incorrect solicitation number is merely a technical defect which does not affect the enforceability of the bond. See id.; SEEMA, Inc., B-255884, Apr. 13, 1994, 94-1 CPD ¶ 256. On the other hand, where there is another ongoing procurement to which the incorrect or altered solicitation number could refer and, as a result, reasonable doubt exists as to whether the government could enforce the bid bond, the incorrect or altered solicitation number renders the bond unacceptable. See Conservatek Indus., Inc., B-254927, Jan. 26, 1994, 94-1 CPD ¶ 42.

Here, there were two separate IFBs for construction services opening on the same day in the Corps's Omaha District offices. H.W. Houston's bid bond, absent the retyped solicitation number, does not identify to which of these two procurements the bond was intended to refer, inasmuch as the bond only provides for a penal sum amount of 20 percent and references the solicitation requirement as construction services. While the altered bid number references the IFB under which this protest is filed, there is no indication in the bid documents that the surety consented to the alteration of the solicitation number. Absent evidence in the bid documents of the surety's consent to the alteration, the agency cannot consider the altered solicitation number in determining whether the surety agreed to be obligated to the government under the IFB. Giles Management Constructors, Ltd., B-227982, Sept. 14, 1987, 87-2 CPD ¶ 248. Since there is no indicia on the face of the bond, other than the altered solicitation number, to indicate to which of these two construction procurements

the bond was intended to refer, it is uncertain as to whether the surety would be bound by H.W. Houston's bid bond. Accordingly, the agency properly rejected H.W. Houston's bid.

The protest is denied.


Robert P. Murphy
for General Counsel