DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

7593

FILE: B-192064 DATE: September 11, 1978

MATTER OF: Tower Elevator Corporation

DIGEST:

Bid bond naming principal different from company submitting bid is deficient notwithstanding that bidder is wholly-owned subsidiary of company named in bond. Surety's obligation to principal on bond may not be imputed to bidder even where matter of affiliation was established by bid forms submitted with bid.

Tower Elevator Corporation (Tower), protests the rejection of its low bid under solicitation No. 2PBO-VN-19147, issued by the General Services Administration (GSA) for elevator maintenance and repair services. Tower's bid was rejected by the contracting officer because Tower submitted a bid bond which named Atlantic Elevator Company, Inc. (Atlantic), rather than Tower, as the principal.

Tower states that it is a wholly-owned subsidiary of Atlantic, and that such relationship was clearly established by its original bid documents, wherein Tower designated Atlantic as its parent company. Accordingly, Tower contends that this fact should have operated to impute the surety's obligation to Tower.

We have consistently held that where a solicitation contains a bid bond requirement, as in the instant case, the requirement constitutes a material part of the solicitation. See A. D. Roe Company, Inc., 54 Comp. Gen. 271, 272 (1974), 74-2 CPD 194, and citations therein. Generally, when a bid bond names a principal different from

the nominal bidder the bond is deficient and the defect may not be waived as a minor informality. A. D. Roe Company, Inc., supra. The deficiency results from the rule of suretyship that no one incurs a liability to pay the debts or perform the duty of another unless he expressly agrees to be bound. See 72 CJS Principal and Surety, § 91 (1951). The law does not create relationships of this character by mere implication. 44 Comp. Gen. 495, 497 (1965).

In a few instances we have found bid bonds to be acceptable, even though the principals named on the bond were different from those named on the bid forms, because it could be determined from the bid itself that the nominal bidder was the same legal entity as the principal named on the bid bond. See B-169369, April 7, 1970; B-176321, August 25, 1972. That is not the situation here, however. The fact that a corporation may own all or the majority of stock of another corporation does not destroy the identity of the latter as a distinct legal entity, see 18 Am. Jur. 2d, Corporations § 17 (1965), and a surety's obligation to one corporation will not be imputed to a separately incorporated, albeit affiliated, firm. 44 Comp. Gen., supra. Thus, the documentation regarding the affiliated relationship furnished to the contracting agency prior to bid opening will not suffice to establish the surety's liability on the bid bond to the unnamed affiliated bidder.

Finally, the record shows that after bid opening GSA requested and received a corporate guaranty from Atlantic guaranteeing the performance and all obligations of Tower, if the contract were awarded to Tower. The request, however, was for a performance guaranty and, as such, was not pertinent to the bid guaranty requirement. Moreover, guaranty obligations under bid bonds may not be established after bid opening. A. D. Roe Company, Inc., supra, and citations therein.

Accordingly, the protest is denied.

R. F. Keller

Deputy Comptroller General
of the United States