



Comptroller General
of the United States

Washington, D.C. 20548

89-2 CPD 489 PR

Decision

Matter of: Pollution Control Industries of America

File: B-236329

Date: November 22, 1989

DIGEST

Where bidder submitted bid bond which is a photocopy not containing original signatures, contracting officer properly rejected bid as nonresponsive because the bid bond is of questionable enforceability.

DECISION

Pollution Control Industries of America protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. 89-49-42 issued by the Argonne National Laboratory, which is operated by the University of Chicago for the Department of Energy, for the demolition and removal of underground storage tanks. The Laboratory rejected Pollution's bid because it was not accompanied by a properly executed bid bond.

We deny the protest.

The IFB required the submission of a bid guarantee in the amount of 20 percent of the bid price. Four bids were opened on June 30, 1989, and the apparent low bidder was Pollution. After review of the documents submitted by that firm at the time of bid opening, the Laboratory determined that the bid bond was not an original document, but rather a photocopy of a facsimile transmission which did not contain original signatures. By letter dated July 10, the contracting officer notified Pollution that its bid had been found nonresponsive primarily because its bond lacked original signatures and would not be considered for award. The contracting officer cited several additional reasons for rejecting Pollution's bid such as the absence of a power of attorney or other evidence authorizing the signer of the bond to bind the surety and the fact that the name of the "contractor" on the second page of the bond differed from the name of the "principal" on that same page.

Pollution argues that the liability of the surety would not be affected by the fact that a photocopy bond was submitted with its bid. The protester also contends that none of the irregularities in its bid bond, taken alone or together, materially affects the agency's right to recover on the bond in the event of default. According to Pollution, its bid bond contained only minor irregularities which it should have been allowed to correct.

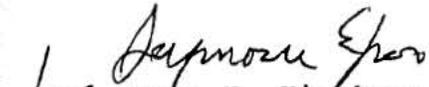
The determinative question in judging the sufficiency of a bid guarantee is whether it could be enforced if the bidder subsequently fails to execute required contract documents and to provide payment and performance bonds. Darla Environmental Inc., B-234560, May 12, 1989, 89-1 CPD ¶ 454. For the bid guarantee to be enforceable, the surety must be clearly bound by information in the bid at the time of bid opening. Id. Here, the protester's use of a bid bond which was a photocopy not containing original signatures creates serious doubts about the liability of the surety--the surety could argue after bid opening that it never agreed to bond Pollution for this contract. Southern California Engineering Co., Inc., B-232390, Oct. 25, 1988, 88-2 CPD ¶ 391. Since the liability of the surety is not clear, DOE properly regarded the bid guarantee as defective. Furthermore, contrary to the protester's contention that this was a minor irregularity which it should have been allowed to correct after bid opening, a required bid bond is a material condition of responsiveness with which there must be compliance at the time of bid opening. Giles Management Constructors, Ltd., B-227982, Sept. 14, 1987, 87-2 CPD ¶ 248.

The protester argues that even if the bond was defective this defect should be excused because prior to submitting its bid it was orally advised by a Laboratory contract specialist that it could submit photocopies of the bid bond with its bid and submit the original bid bond later. There is no merit to this argument. First, the alleged statement as reported by the protester--the contract specialist informed the protester that she did not have a "definite answer" to the question concerning the acceptance of a photocopied bond but that since little time remained prior to bid opening "a copy would have to do"--can hardly be said to have been firm advice or permission to submit a photocopy. Second, the contract specialist denies ever having made even this limited statement to the protester. Third, and most importantly, oral advice in these circumstances generally is not binding, and a contractor relies on oral advice with respect to solicitation requirements at its own risk. See Wallace Coast Machinery Co., B-235608, September 15, 1989, 89-2 CPD ¶ 234. Thus, there is no basis

for excusing Pollution's submission of an unacceptable bid bond.

Finally, the protester complains that it was not treated fairly because the awardee's bid bond contained a defect--the certificate of corporate principal was left blank--which should have resulted in rejection of the bid. We think that the bid was properly accepted because the portion of the bond left blank had no impact on the liability of the surety. The certificate was to ensure that the individual signing for the principal had the authority to do so. Here, the bond was signed by the awardee's president and the accompanying bid which was signed by the same individual included a certification of the president's authority to sign on behalf of the bidder.

The protest is denied.


James F. Hinchman
General Counsel