



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Bio-Nomic Services, Inc.

File: B-278341

Date: December 24, 1997

Donald J. Walsh, Esq., Scaldara & Potler, L.L.P., for the protester.
Col. Nicholas P. Retson and Capt. Christopher Hellmich, Department of the Army,
for the agency.
Adam Vodraska, Esq., and James Spangenberg, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

A bid accompanied by a bid bond listing the principal as incorporated in a different state than the nominal bidder was properly rejected as nonresponsive because the obligation of the surety is unclear where the legal entity on the bid and the legal entity shown on the bid bond are not the same.

DECISION

Bio-Nomic Services, Inc. protests the award of a contract to Waste Management Industrial Services, Inc. under invitation for bids (IFB) No. DABT31-97-B-0041, issued by the Department of the Army for sludge removal and dewatering from the sedimentation pond at the Ft. Leonard Wood, Missouri, water treatment plant. Bio-Nomic contends that the Army improperly rejected its bid as nonresponsive.

We deny the protest.

The Army received three bids in response to the IFB, which required bidders to submit a bid bond in the amount of 20 percent of the bid price. The contracting officer rejected the low bid as nonresponsive because that bidder failed to provide the required bid bond. The apparent second low bid was from the protester, identified on the bid's cover page as Bio-Nomic Services, Inc., with a Charlotte, North Carolina business address. Elsewhere in its bid, the protester represented that it operates as a corporation incorporated under the laws of the state of Illinois. With its bid, the protester submitted a bid bond issued by a corporate surety for the requisite amount. The bid bond identified the principal as Bio-Nomic Services, Inc., at the same North Carolina business address as on the bid, but listed the principal as a corporation incorporated in the state of North Carolina. The bid bond was imprinted with the principal's corporate seal stating "Bio-Nomic Services, Inc. North Carolina."

The contracting officer contacted Bio-Nomic after bid opening to establish in which state--Illinois or North Carolina--the firm was actually incorporated. In response, Bio-Nomic confirmed that it is incorporated in Illinois. It then submitted a revised bid bond without a corporate seal and changed the state of incorporation listed on the bond to Illinois. The contracting officer thereafter rejected Bio-Nomic's bid as nonresponsive because the legal entity identified as the bidder was not identical to the legal entity named as the principal on the original bid bond. Award was made to Waste Management Industrial Services, Inc., the remaining bidder. Bio-Nomic's protest of the rejection of its bid followed.

The submission of a required bid bond is a material element of a bid which affects its acceptability. The sufficiency of a bid bond depends on whether the surety is clearly bound by its terms at the time of bid opening; when the liability is not clear, the bond is unacceptable, and the bid must be rejected as nonresponsive. Design for Health, Inc., 69 Comp. Gen. 712, 714 (1990), 90-2 CPD ¶ 213 at 3; Reliable Elec. Constr., Inc., B-250092, Sept. 23, 1992, 92-2 CPD ¶ 198 at 2. This rule is prompted by the rule of suretyship that no one incurs a liability to pay the debts of another unless he expressly agrees to be bound. A.D. Roe Co., Inc., 54 Comp. Gen. 271, 273 (1974), 74-2 CPD ¶ 194 at 4; The Scotsman Group, Inc., B-245634, Jan. 13, 1992, 92-1 CPD ¶ 57 at 3. For this reason, the principal listed on the bid bond must be the same legal entity as the nominal bidder since there is doubt whether a bid bond that names a principal different from the nominal bidder clearly binds the surety. A.D. Roe Co., Inc., *supra*, at 4. Such a discrepancy between the bid bond principal and nominal bidder may not be waived as a minor informality or be corrected after bid opening. Design for Health, Inc., *supra*, at 4; Mount Diablo Corp., Inc., B-228193, Nov. 10, 1987, 87-2 CPD ¶ 475 at 1-2.

We agree with the Army that Bio-Nomic's bid was nonresponsive because the discrepancy between the nominal bidder's state of incorporation shown in the bid and the principal's state of incorporation shown in the bid bond evidences that the legal entity named in the bid may be different from the entity named in the bid bond. While the nominal bidder and the bid bond principal have the same name and address, the bid bond clearly obligates the surety on behalf of a principal incorporated in the state of North Carolina.¹ While the protester now claims that there is no North Carolina corporation by this name, but only the Illinois corporation, we think that there is doubt whether the surety's obligation would extend beyond its obligation on behalf of a North Carolina corporation, and that the contracting agency could not be certain that the surety would be bound by the terms of the bid bond in the event of a default by the bidder. See Design for Health, Inc., *supra*, at 4; The Scotsman Group, Inc., *supra*, at 3.

¹The corporate imprint "Bionomic Services, Inc. North Carolina" on the bid bond also suggests that the surety's obligation is on behalf of a North Carolina corporation.

In its comments on the agency report, the protester challenges the responsiveness of the awardee's bid. We dismiss this allegation as untimely. Where, as here, bids are opened publicly, protesters are required to make some diligent effort to review the bids shortly after bid opening, and may not, as here, wait to review the awardee's bid in the agency report. Products for Indus., B-257463, B-257463.2, Oct. 6, 1994, 94-2 CPD ¶ 128 at 3-4; Thomas May Constr. Co., B-255683, Mar. 23, 1994, 94-1 CPD ¶ 210 at 2.

The protest is denied.

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