

# DECISION



## THE COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

60246 97651

FILE: B-184409

DATE: November 28, 1975

MATTER OF: Villarreal Construction Co., Inc.

### DIGEST:

Bid submitted in corporate name, accompanied by bid bond in name of joint venture consisting of corporation and individual was properly rejected as nonresponsive because of discrepancy between legal entity in bid and bid bond. Defect cannot be waived as minor informality as bid bond requirement is material.

Villarreal Construction Co., Inc. (Villarreal), protests the rejection of its bid as nonresponsive for failure to comply with the bid guarantee requirements under invitation for bids (IFB) No. DAKF49-75-B-0103, issued by the Procurement Division, DIO, Fort Sam Houston, Texas.

On June 6, 1975, the IFB was issued for foundation removals and landscaping at Fort Sam Houston, Texas. Bids were opened on June 26, 1975. Of the four bids received, the low bid was submitted by Villarreal. The bid revealed a discrepancy in that its Standard Form 19-B, Representations and Certifications, identified the bidder as a "corporation" whereas its Standard Form 24, Bid Bond, identified the principal as a "joint venture." The contracting officer reports that Mr. Villarreal advised that his firm was a corporation but that the bonding agent would not provide the required bond unless his corporation and all personal assets were included and therefore the bid bond was executed as a joint venture.

By letter dated June 30, 1975, the contracting officer advised Villarreal:

"Your bid received in response to above referenced invitation for bids is rejected, inasmuch as the bid bond submitted was found to be defective in name of joint venture consisting of a corporation and an individual, and the defect cannot be waived by the Contracting Officer."

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On the same date, contract No. DAKF49-75-D-0038 in the estimated amount of \$346,510 was awarded to C. S. Ehinger.

By letter dated July 3, 1975, Villarreal protested to our Office against the rejection of its bid. Villarreal contends that it submitted a valid bid bond. In this regard, the letter states, in part:

"On July 1, 1975 we received a rejection to our bid claiming we had presented a defective bid bond. The objection was to the wording. The bid form read as follows: Villarreal Construction Company, Inc. while the bid bond read Villarreal Construction Co., Inc. and Jesse Villarreal, A Joint Venture.

"I, Jesse Villarreal, am an authorized representative of this company which is solely owned by me. The company and Jesse Villarreal are one and the same.

"We contacted Fidelity and Deposit Company of Maryland and they have assured us that it is no problem to alter and/or conform with any specified wording required."

For the reasons stated below, we conclude that the bid was properly rejected as nonresponsive for failure to comply with the bid bond requirements.

The IFB included Standard Forms 20 and 22. Paragraph 4, Standard Form 22, in pertinent part, states:

"Where a bid guarantee is required by the invitation for bids, failure to furnish a bid guarantee in the proper form and amount, by the time set for opening of bids, may be cause for rejection of the bid."

Paragraph 22, Standard Form 20, in pertinent part, states:

"Each bidder shall submit with his bid a Bid Bond (Standard Form 24) with good and sufficient surety or sureties acceptable to the Government \* \* \*"

The bid form identifying the bidder as "Villarreal Construction Company, Inc.," is signed by "Jesus Villarreal," president. On the Representations and Certifications form, the bidder is identified as "Villarreal Construction Company, Inc.," a corporation incorporated in the State of Texas. However, the bid bond identifies the principal as "Villarreal Construction Co., Inc., and Jesse Villarreal, a Joint Venture." The signature "Jesus Villarreal" appears in two signature blocks provided for the principal. The first signature is followed by the typed name "Villarreal Construction Co., Inc." The second signature is followed by the typed name "Jesse Villarreal." Also, the words "joint venture" are checked in a space entitled "Type of Organization" appearing in the upper right hand corner on the face of the bid bond.

We have consistently held that the bid bond requirements are a material part of the IFB and the contracting officer cannot waive the failure to comply with these requirements. The basis for this rule as stated in our decision in 38 Comp. Gen. 532, 536 (1959) is as follows:

"\* \* \* waiver of a bid bond requirement stated in an invitation for bids would have a tendency to compromise the integrity of the competitive bid system by (1) making it possible for a bidder to decide after opening whether or not to try to have his bid rejected, (2) causing undue delay in effecting procurements, and (3) creating, by the necessary subjective determinations by different contracting officers, inconsistencies in the treatment of bidders. The net effect of the foregoing would be detrimental to fully responsive and responsible bidders, and could tend to drive them out of competition in those areas where the practices described occur. This result could hardly be said to serve the best interests of the United States. \* \* \*"

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Furthermore, Armed Services Procurement Regulation (ASPR) § 10-102.5 (1974 ed.) recognizes the materiality of the bid bond requirements. This regulation, in pertinent part, states:

"When a solicitation requires that bids be supported by a bid guarantee, noncompliance with such requirement will require rejection of the bid  
\* \* \*" (Emphasis supplied.)

ASPR § 10-102.5 does state certain specified exceptions to this general rule. However, none of these stated exceptions are applicable to the present case nor do any of these exceptions permit the possibility of attempts by bidders to leave themselves the option of refusing the contract with no effective security for the Government or of correcting the defective securities in order to receive the award. See 39 Comp. Gen. 796 (1960).

We have consistently held that a bid bond which names a principal different from the nominal bidder is deficient and the defect may not be waived as a minor informality. 44 Comp. Gen. 495 (1965); 51 Comp. Gen. 836 (1972); 52 Comp. Gen. 223 (1972); B-177890, April 4, 1973; B-178796, August 8, 1973. This rule is prompted by 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 C.J.S. Principal and Surety § 91 (1951). Cf. Stearns Law of Suretyship § 4.14 (5th ed. 1951). In this regard, Annot., 144 A.L.R. 1263, 1267 (1943) states:

"Even aside from the general doctrine that a surety's liability is strictissimi juris and cannot be extended by construction, there seems to be no escape from the proposition that a surety who undertakes to respond in respect of the acts of one principal cannot be held liable in respect of the acts of another, or of the principal and another acting with him as principal; for so to extend his liability would be to hold him to an essentially different contract. Clearly, the identity of the principal is linked to the identity of the contract.  
\* \* \*"

The determination of the sufficiency of a bid bond relates to whether the Government will receive the full and complete protection it contemplated in the event the bidder fails to execute the required contract documents and deliver the required performance and payment bonds. See 39 Comp. Gen. 60 (1959); 52 Comp. Gen. 223 (1972). In the present case, the surety's liability under the bond is contingent upon the bid being in the name of the entity listed on the bid bond, i.e., "Villarreal Construction Co., Inc., and Jesse Villarreal, a Joint Venture." Therefore, we are unable to conclude on the basis of the information Villarreal submitted with its bid that the surety would be bound in the event of the failure of Villarreal to execute the contract upon acceptance of its bid. See B-170361, July 27, 1970; 50 Comp. Gen. 530 534 (1971). Accordingly, the bid was properly rejected as nonresponsive because of the discrepancy between the legal entity in the bid form and the bid bond form. See A. D. Roe Company, Inc., 54 Comp. Gen. 271 (1974), 74-2 CPD 194, and Hoyer Construction Company/K.D. Hoyer, a Joint Venture, B-183096, March 18, 1975, 75-1 CPD 163.

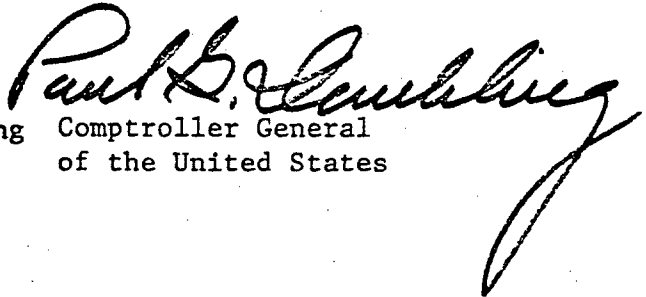
Counsel for the protester contends that the discrepancy between the bid bond form and the bid form could have been cured after clarification by the bidder. However, the responsiveness of a bid is determined upon the basis of the bid as submitted and it is not proper to consider the reasons for the nonresponsiveness, whether due to mistake or otherwise. 51 Comp. Gen. 836 (1972); 38 Comp. Gen. 819 (1959).

Counsel for the protester contends further that the bid was for consideration under the holdings in B-160659, June 9, 1967, and B-169369, April 7, 1970. However, the cited decisions are distinguishable from the immediate situation. In B-169369, the principal named on the bid bond was a joint venture which included a corporation as a member and the nominal bidder was the corporation. We held the bid to be responsive and not subject to rejection because it appeared from the information submitted with the bid that the bid was intended to be that of the joint venture. In addition to the bid bond, a copy of the "Certificate of Joint Venture With Parent Company" was submitted with the bid clearly expressing the intention and agreement of the two affiliated companies to submit

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a joint bid. That is not the case here. Moreover, in B-160659, the bidder was the same legal entity as the principal on the bid bond and the only question was the effect of an undated bid bond on the responsiveness of the bid. That is not the situation in the present case.

Accordingly, Villarreal's protest against the rejection of its bid is denied.

  
Acting Comptroller General  
of the United States