

13826 Zachem Proc II



DECISION

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

[Protest of Bid Rejection as Nonresponsive]

FILE: B-198687

DATE: May 23, 1980

MATTER OF: Ron Grove's Heating, Air Conditioning, and Piping, Inc.

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DIGEST:

1. Low bid is nonresponsive and not for consideration when bidder's corporate surety is not listed in Treasury Department Circular 570. Requirement in solicitation for adequate surety is material to bid.
2. Agency cannot accept bid bond submitted after bid opening because bidder may not make an otherwise nonresponsive bid responsive.
3. Where parent corporation has not itself been issued certificate of authority to do business as corporate surety with United States fact that subsidiary corporation is so authorized does not make bond issued by parent acceptable since each has separate corporate existence and are treated as separate legal entities.

Ron Grove's Heating, Air Conditioning, and Piping, Inc. (Ron Grove) protests the rejection of its bid as nonresponsive under invitation for bids (IFB) CI 80-E032, issued by the Environmental Protection Agency (EPA).

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EPA rejected Ron Grove's low bid as nonresponsive because Mid-Continent Casualty Company (Mid-Continent), the surety on its bid bond, was not listed in Treasury Department Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies." After bid opening, Ron Grove submitted another bid bond with Oklahoma Surety Company (Oklahoma) as the surety. The

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latter firm was listed in the Treasury Circular. According to the protester, Oklahoma is a wholly-owned subsidiary of Mid-Continent. The protester states that it previously had submitted bid and performance bonds using the same corporate sureties to another Government agency and argues that EPA therefore should accept its bid in this case.

It is clear from Ron Grove's submission that its protest is without legal merit and, therefore, we have not obtained an agency report before reaching our decision. Klean-Vu-Maintenance, Inc., B-194054, February 22, 1979, 79-1 CPD 126.

We have held that where a bid guarantee is required as part of a bid, the failure to provide a guarantee will render the bid nonresponsive. 38 Comp. Gen. 532 (1959); 46 Comp. Gen. 11 (1966). That failure cannot be waived or excused unless one of the exceptions in Federal Procurement Regulations (FPR) § 1-10.103-4 (1964 ed. amend. 184) is present. Those exceptions are very narrow, and none applies here.

In this case, the question is not the failure to provide a guarantee, but rather the provision of an inadequate guarantee. We recently have addressed this problem in two cases, Alpha Sigma Investment Corp., B-194629.2, May 17, 1979, 79-1 CPD 360 and S.T.C. Construction Company, B-194980, July 27, 1979, 79-2 CPD 60. In these decisions, we held that failure to provide a bid guarantee from a surety listed in Treasury Department Circular 570 will render a bid nonresponsive.

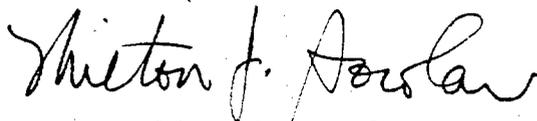
The rationale behind these cases is that the language of Standard Form (SF) 21 of the IFB, i.e., that a bid must be accompanied by a "good and sufficient surety," notifies bidders that not all sureties will be considered adequate. In this regard, FPR 1-10.202 (1964 ed. amend. 27) requires that "any corporate surety offered for a bond furnished the Government must appear on the list contained in Treasury Department Circular 570 * * *." This list of acceptable sureties is readily

available for inspection by bidders, and it is incumbent upon a potential bidder to determine which of the sureties available are acceptable to the Government. In our view, it is not unreasonable to expect a bidder needing information to insure its surety is "good and sufficient" to check the regulations and Treasury Department Circular 570. Alpha Sigma Investment Corp., supra. The fact that another agency previously may have overlooked any deficiency in Ron Grove's bonds, does not change the result here.

Moreover, EPA may not accept the bond Ron Grove offered after bid opening, even though the surety is listed in the Treasury circular, because a bidder may not make an otherwise nonresponsive bid responsive after bid opening. See S.T.C Construction Company, supra.

The fact that the corporate surety on the second bond may be a subsidiary of the corporate surety on the bond initially submitted does not affect this result. This is so because there are specific requirements which a surety must meet as a prerequisite to the issuance of a certificate of authority to do business with the United States. 31 C.F.R. 223.1 et seq. (1978). Since a parent corporation generally has a separate corporate existence and is treated as a separate entity, 18 Am. Jur. 2d Corporations § 17 (1965), the mere fact that the subsidiary corporation was listed in the Circular, does not make the parent corporation acceptable to the Treasury.

The protest is summarily denied.



For The Comptroller General
of the United States