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DECISION



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

[Protest of Bid Rejection as Nonresponsive]

FILE: B-201614

DATE: April 21, 1981

MATTER OF: Structural Finishing Inc.

DIGEST:

Bid accompanied by altered bid bond without evidence in bid documents or bond itself of sureties' consent to be bound by changes is properly rejected as nonresponsive. Fact that individual sureties are also corporate principals does not itself establish sureties' intent to be bound by altered bond.

Structural Finishing Inc. (Structural) protests the rejection of its low bid as nonresponsive under Department of the Air Force invitation for bids (IFB) F22600-80-B-0075. Structural's bid was rejected because it was accompanied by a bid bond which had been altered without any indication of consent to the changes by the sureties.

The bid bond in question originally contained handwritten entries indicating that it was executed for solicitation No. F64605-80-B-0098, with a bid date of September 3, 1980, and in the penal sum of \$20,000. As submitted in this current procurement, it had white correction fluid over the original entries, and new typewritten entries (the original entries are visible when the bid bond is held to a light) indicating that (1) the solicitation number was F-22600-80-B-0075, (2) the penal sum was \$40,000, and (3) the bid date was September 24, 1980.

Relying on our decision in Southland Construction Company, B-196297, March 14, 1980, 80-1 CPD 199, the Air Force rejected Structural's bid as nonresponsive. In that decision we held that a bid properly may be rejected as nonresponsive where it is accompanied by an altered bid bond without evidence of the surety's consent to be bound by the changes. Structural contends,

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however, that Southland is not controlling because, unlike the situation in that case, here the individual sureties on the bond also are principals of the corporation. Consequently, the protester believes that by virtue of this "unity of identity and interest," and because one of the sureties has the power of attorney for the other, both sureties agreed to or had knowledge of the changes before bid opening and could not disavow their obligation under the bond.

We do not agree with the protester. A general rule of surety law is that no one incurs a liability to pay a debt or perform a duty for another unless he expressly agrees to be so bound, for the law does not create relationships of this character by mere implication. 44 Comp. Gen. 495 (1965). For this reason, a bond which has been altered without any evidence that the surety agreed to be bound by the changed terms and conditions is materially defective. See Long's Air Conditioning, Inc., B-187566, January 6, 1977, 77-1 CPD 11. Moreover, to permit a bidder to establish a surety's obligation on a bid bond after bid opening would compromise the integrity of the competitive bid system by giving a bidder the chance to decide after bid opening whether or not to make its bid acceptable. See Long's Air Air Conditioning, Inc., supra.

Here, there is no evidence in the bid documents or on the bond itself that the sureties agreed to be bound by the changes. Further, since the obligations of a surety do not arise by implication, the fact that the sureties are principals in the corporate bidder does not establish that they were aware of and acquiesced in the changes on the bond. That would particularly seem to be the case here, where the bid was signed by someone other than the individual sureties; clearly, under these circumstances, the sureties are in a position to disavow their obligation under the bond by disclaiming any agreement to be bound by that altered document. Consequently, we find that the agency properly rejected Structural's bid as nonresponsive. Southland Construction Company, supra.

The protest is denied.


Acting Comptroller General
of the United States