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DECISION



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

FILE: B-206353

DATE: April 19, 1982

MATTER OF: Baucom Janitorial Service, Inc.

DIGEST:

A bid accompanied by an altered bid bond without evidence in the bid documents or on the bond itself of the surety's consent to be bound by the changes properly was rejected as nonresponsive.

Baucom Janitorial Service, Inc. protests the rejection of its bid as nonresponsive under Air Force invitation for bids (IFB) No. F22600-81-B-0036 for custodial services. Baucom'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 surety. We deny the protest.

The IFB required a bid bond of 20 percent of the bid price. The bond originally obtained by Baucom from the surety appears to have contained two entries of \$40 thousand; one representing the penal sum and the other the surety liability limit. As submitted in this procurement, however, the bond had white correction fluid over the "4" in both entries and a "5" typed in both corrected places to make both the penal sum and liability limit \$50 thousand. There was nothing in the bid documents or on the bond itself to indicate that the surety agreed to be bound by the changes.

Relying on our decisions in Structural Finishing Inc., B-201614, April 21, 1981, 81-1 CPD 303, and Southland Construction Company, B-196297, March 14, 1980, 80-1 CPD 199, the Air Force rejected Baucom's bid as nonresponsive. In those decisions we held that a bid properly was rejected as nonresponsive where it was accompanied by an altered bid bond without evidence of the surety's consent to be bound by the changes because of the general rule of surety law that no one incurs a liability to pay a debt or perform a duty for another unless he expressly

agrees to be bound, for the law does not create relationships of that character by mere implication. See 44 Comp. Gen. 495 (1965). Baucom contends that the instant situation is distinguishable from the ones in Structural and Southland because it has furnished proof in the form of an affidavit from its surety that the bid bond alterations were done with the surety's pre-bid opening consent.

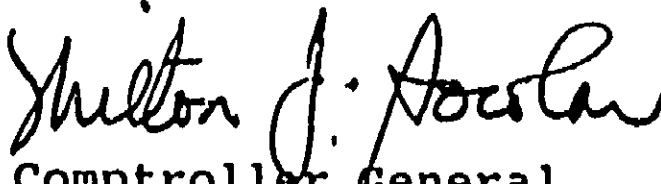
We do not agree with Baucom. The test for determining "responsiveness" is whether the bid as submitted complies with the material terms of the invitation. 49 Comp. Gen. 553, 556 (1970). We long ago decided that a bid bond requirement was one of these material terms. See 38 Comp. Gen. 532, 536 (1959). To view the bid bond requirement otherwise, so as to permit waiver of a bid bond requirement or of a failure to furnish a proper bid bond, would make it possible for a bidder to decide after opening whether or not to have its bid rejected, cause undue delay in effecting procurements, and create, through the subjective determinations by different contracting officers of whether waiver is appropriate, inconsistencies in the treatment of bidders. See Edw. Kocharian & Company, Inc.--request for modification, 58 Comp. Gen. 516, 518 (1979), 79-1 CPD 326.

As indicated in both Structural and Southland, a bid accompanied by an altered bid bond without evidence in the bid that the surety agreed to the altered bond terms is not a proper bond and therefore is nonresponsive. It is a fundamental principle of Government procurement that a nonresponsive bid cannot be made responsive after bid opening through change or explanation of what was intended. See W. S. Jenks & Sons, B-195861, November 26, 1979, 79-2 CPD 373. Thus, Baucom cannot establish its surety's consent to the bid bond alterations, and thereby correct the bidding defect, by a post-bid opening affidavit, even though the affidavit purports to show pre-bid opening consent. See Long's Air Conditioning, Inc., B-187560, January 6, 1977, 77-1 CPD 11.

Baucom also cites our decision at 39 Comp. Gen. 209 (1959) for the proposition that a bidder may be allowed, after bid opening, to increase the amount stated in its bid bond when it is obvious on the face of the bid that the bidder intended to submit a bid bond in a higher amount. Baucom argues that since it is obvious from its bid of \$223,111.53 that a \$50 thousand rather than a \$40 thousand bid bond was necessary to satisfy the IFB's 20 percent requirement, its bid bond alterations from \$40 thousand to \$50 thousand should not be cause for rejection.

The cited case is inapposite to the instant situation. The 1959 decision permitted adjustment of a bid security amount to conform to a bid which was corrected after bid opening pursuant to the mistake-in-bid correction procedures. The decision's rationale was that because of the extent of the showing required to correct a bid after opening--clear and convincing evidence of the mistake, its nature, and the intended bid--a bidder would not obtain an undue competitive advantage if adjustment in the amount of the bid security were permitted consistent with the authorized bid correction. In other words, if a bidder is allowed to increase its bid under the bid correction procedures, it also will be permitted to increase its bid bond amount. Here, the amount that Baucom bid is the amount that the firm intended to bid--there is no question of mistake--and therefore no adjustments may be imputed from the bid amount to the bid bond.

The protest is denied.

for 
Comptroller General
of the United States