DECISION

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

FILE: B-220204; B-220205 **DATE:** October 1, 1985

MATTER OF: Crimson Enterprises, Inc.

DIGEST:

The validity of a bid bond that does not include the signature of the authorized representative of the surety is sufficiently questionable to warrant rejection of the bid as nonresponsive.

Crimson Enterprises, Inc. (Crimson), protests the rejection of its bids as nonresponsive to two solicitations: invitation for bids (IFB) No. DACA83-85-B-0201 and No. DACA83-85-B-0202, issued by the United States Army Corps of Engineers for reroofing of family housing quarters in Hawaii. We dismiss the protests without securing comments from Crimson on the agency report pursuant to our Bid Protest Regulations, 4 C.F.R. § 21.3(f) (1985), since the report establishes that Crimson is not an interested party to protest the one IFB, and that the protest under the other has no legal merit.

Bids submitted on the solicitations were opened on August 15, 1985. Crimson submitted the low bid on the first IFB and the second low bid on the second IFB. The Army states that the low bidder on IFB-0202 is responsive and responsible, and Crimson thus is not an interested party within the meaning of our Regulations, 4 C.F.R. § 21.1(a) to pursue its complaint, since Crimson would not receive award under this IFB even if its protest were sustained. Universal Parts and Services, Inc., B-216767, B-216806, Dec. 12 1984, 84-2 C.P.D. ¶ 660. Consequently, we dismiss the protest on this IFB. We note, however, that the factual situation is nearly identical with that of the protest on IFB-0201, so that the merits of both protests are governed by the same considerations.

The IFBs required the submission of bid bonds. Attached to each of Crimson's bids was a bid bond dated August 9 and a general power of attorney from the surety. The general power of attorney listed the names of several individuals, including a Mr. Robert J. Powell, as attorney-in-fact authorized to execute a bond in the name of the

United States Fidelity and Guarantee Company. The bond attached to each IFB bore the name of the surety and the surety's seal. The name of Robert J. Powell, as attorney-in-fact, was typed on the bond, but the bond was not signed by Mr. Powell or by any other surety representative. The contracting officer therefore notified Crimson by letter of August 30 that its bids were nonresponsive since the bonds were defective. In the meantime, by telegram of August 29, Mr. Robert J. Powell advised that he indeed issued the bond attached to IFB-0201.

Crimson contends that since the bid bond was "executed" on August 9 with the corporate seals of both principal and surety, the name of the surety, and the typed name and title of the attorney-in-fact and, in view of the post-bid-opening advice by the attorney-in-fact, the surety was bound by the bond as of August 9. Crimson argues that the omission of the signature, therefore, constituted a minor informality which did not render the bids nonresponsive.

We considered an almost identical factual situation in Truesdale Construction Co., Inc., B-213094, Nov. 18, 1983, 83-2 C.P.D. ¶ 591. There, as here, the surety's representative did not sign the bid bond, which otherwise bore the surety's seal, the name of the surety, the proper amount, and the name of the representative typed in the proper place and to which was attached a power of attorney authorizing the representative to execute bonds. We noted that a bid bond is a material part of the bid, so that a defective bond renders the bid itself nonresponsive, unless the bidding documents establish that the bond could be enforced if the bidder did not execute the contract. We further noted that there is no consensus among legal authorities regarding the effect of a surety's failure to sign a bond: some believe that a bond sealed and delivered to the obligee is sufficient without the obligor's signature, while others consider the signature of the surety's representative a necessary prerequisite to an enforceable bond. We stated:

> "In light of this conflicting legal authority, we cannot conclude with certainty whether the surety here would be able to disclaim liability on the bond because of the absence of the signature of its attorney-in-fact. Thus, we

believe that the contracting officer acted reasonably in concluding that the bond was defective and therefore rejecting the bid."

For the same reasons expressed in Truesdale, we cannot disagree with the Corps that Crimson's failure to furnish a bond with the surety's signature made the validity of the bond questionable and that the bids thus were nonresponsive.

Moreover, as we further held in Truesdale, a bid which is nonresponsive cannot be corrected after bid opening to make it responsive by, for example, advice from the attorney-in-fact that the bond is viable. See also Allen County Builders Supply, B-216647, May 7, 1985, 64 Comp. Gen. ____, 85-1 C.P.D. ¶ 507. Consequently, the confirmation received from the authorized attorney-in-fact after bid opening in the present case does not correct the defect, and the Army was justified in rejecting the bids.

The protests are dismissed.

Robert M. Strong
Deputy Associate General Counsel