

Wilkosky



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Harrison Contracting, Inc.

File: B-224165

Date: October 7, 1986

DIGEST

1. A low bid was properly rejected as nonresponsive where the bidder furnished a bid guarantee which qualified the surety's liability.
2. Since a bid guarantee provision in an IFB is a material requirement which must be met at the time of bid opening, a bid which is nonresponsive due to the lack of an adequate bid guarantee cannot be made responsive by furnishing the guarantee in proper form after bid opening, except under those limited conditions set forth in the Federal Acquisition Regulation, none of which are present here.
3. A surety's agreement after bid opening to delete a nonresponsive provision in a bid guarantee does not constitute a permissible late modification of the bid because the bid was unacceptable as originally submitted for failing to include an adequate bid guarantee.

DECISION

Harrison Contracting, Inc. (Harrison), protests the rejection of its low bid as nonresponsive under invitation for bids (IFB) No. 626-98-86, issued by the Veterans Administration (VA) for asbestos removal and reinsulation at the VA Medical Center, Nashville, Tennessee. The VA rejected the bid because it was accompanied by an inadequate bid guarantee.

We summarily dismiss the protest without obtaining an agency report from VA, since it is clear from material furnished on behalf of Harrison that the protest is without legal merit. 4 C.F.R. § 21.3(f) (1986).

According to documentation submitted by Harrison, it was the apparent low bidder at the May 20, 1986, bid opening. The VA found Harrison's bid nonresponsive because of the provision in its bid guarantee that:

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"In the event that the contractor is unable to obtain or continue insurance coverage in full force required under this contract for the duration of the contract and it is declared in default for such cause; then this Bond shall be null & void from inception."

In a decision dated August 19, 1986, denying Harrison's agency-level protest, the VA states that Harrison's bid imposed conditions that modified requirements of the invitation, limited its liability to the government, and imposed conditions that would be prejudicial to other bidders.

Harrison notes that its insurance contract was renewed in July 1986 and that in a letter dated August 12, 1986, the surety removed the provision to which VA objected. Harrison contends that the qualifying paragraph in its bid guarantee was immaterial and should have been waived as a minor informality, given that its insurance was renewed in July. Harrison also contends that the surety's letter constituted a permissible late modification of its bid, and that if we uphold VA's rejection of its bid, the government will be paying a higher price contrary to the spirit and text of the regulations.

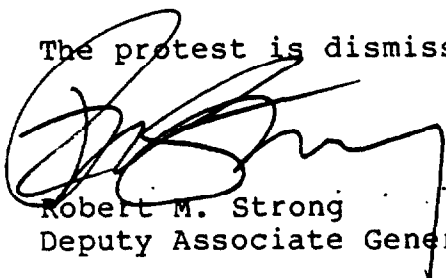
A bid guarantee assures that the bidder will not withdraw its bid within the time specified for acceptance and, if required, will execute any post-award contractual documents and furnish performance and payment bonds. IMPESA International Inc., B-221903, June 2, 1986, 86-1 C.P.D. ¶ 506. When required, a bid guarantee is a material part of the bid, and by its terms must clearly establish the requisite liability of the surety or the bid must be rejected as non-responsive. See Tom Mistick & Sons Inc., B-222326, Apr. 3, 1986, 86-1 C.P.D. ¶ 323. Here the terms of the bid guarantee qualified the surety's liability. The VA could not waive the bid guarantee's deficiency because none of the limited conditions in the Federal Acquisition Regulation (FAR), 48 C.F.R. § 28.101-4, permitting waiver were present. See H.C. Transportation Co., Inc., B-219600, Aug. 21, 1985, 85-2 C.P.D. ¶ 207.

A bid which is nonresponsive due to the lack of an adequate guarantee cannot be made responsive, as attempted here, by furnishing the guarantee in proper form after bid opening. H.C. Transportation Co., Inc., B-219600, *supra*. We do not agree with Harrison's assertion that the surety's agreement after bid opening to delete the nonresponsive provision from its guarantee represented a permissible late modification of its bid. The firm relies upon the FAR, 48 C.F.R.

§ 14.304-1(d), which provides that a late modification of an otherwise successful bid making its terms more favorable will be considered at any time and may be accepted. This regulatory provision only applies if the bid is acceptable as originally submitted. Since Harrison's bid as originally submitted was accompanied by an inadequate bid guarantee which made the bid nonresponsive, it was not an "otherwise successful bid" within the context of the FAR provision. See Building Systems Contractors, Inc., B-219416, July 9, 1985, 85-2 C.P.D. ¶ 36.

To the extent Harrison contends that acceptance of its low bid will result in substantial savings to the government, the public interest in strictly maintaining the sealed bidding procedures required by law outweighs any monetary advantage which the government might gain in a particular case by a violation of those procedures. Id. at 4.

The protest is dismissed.



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