



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: H & N Electric, Inc., and Buck's Electric, Inc.
File: B-224024
Date: December 29, 1986

DIGEST

Where bid is submitted in the name of one firm and is accompanied by a bid bond in the name of a joint venture consisting of the bidder and another entity, the bid bond is materially deficient, as the obligation of the surety is unclear and, therefore, the bid must be rejected as nonresponsive.

DECISION

H & N Electric, Inc. (H & N) and Buck's Electric, Inc., protest the rejection of their low bid under invitation for bids (IFB) No. 568-5-86, issued by the Chief Supply Service, Veterans Administration (VA) Medical Center, Fort Meade, South Dakota, for a replacement fire alarm system. The VA determined that H & N's bid was nonresponsive because there was a discrepancy between the legal entity shown on the bid and the legal entity shown on the bid bond. We deny the protest.

The bid submitted listed Buck's Electric, Inc., as the bidder and was signed by Darold G. O'Neal as president. In the certification section of the bid, "joint venture" was checked as the type of business organization. The bid bond enclosed with the bid listed "H/N Electric, Inc. and Buck's Electric, Inc.," as principal and joint venture was checked as the type of business organization. The signatures of Harlan E. Neilsen, as president of H/N Electric, Inc., and Darold G. O'Neal, as president of Buck's Electric, Inc., appear on the bid bond.

By letter dated August 21, 1986, the contracting officer notified H & N that its bid was being rejected as nonresponsive because of the discrepancy between the legal entities shown on the bid and the bid bond.

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Bid bond requirements are a material part of the IFB that a contracting officer cannot waive. See 52 Comp. Gen. 223 (1972); Atlas Contractors, Inc./Norman T. Hardee, a Joint Venture, B-208332, Jan. 19, 1983, 83-1 C.P.D. ¶ 69. Thus, a bid bond which names a principal different from the nominal bidder is deficient and the defect may not be waived as a minor informality. A. D. Roe Company, Inc., 54 Comp. Gen. 271 (1974), 74-2 C.P.D. ¶ 194. This rule is prompted by the rule of suretyship that no one incurs a liability to pay the debts of another unless he expressly agrees to be bound. See Hoyer Construction Company/K.D. Hoyer, a Joint Venture, B-183096, Mar. 18, 1975, 75-1 C.P.D. ¶ 163; Atlas Contractors, Inc./Norman T. Hardee, a Joint Venture, supra. Moreover, a surety under a bond in the name of more than one principal is not liable for the default of one of them. For this reason, we rigidly apply the rule that the principal listed on the bid bond must be the same as the nominal bidder. Opine Construction, B-218627, June 5, 1985, 85-1 C.P.D. ¶ 645.

H & N contends that the failure of one joint venturer to sign the bid can be waived as a minor informality, citing Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.405(c)(1) (1985), which provides that the bidder's failure to sign the bid may be considered a minor informality if the bid is accompanied by other material indicating the bidder's intention to be bound. Moreover, H & N argues that its situation can be distinguished from the above cited cases because the surety here intended to bind each of the contractors whether acting as a joint venture or individually. H & N has submitted a signed affidavit from the surety expressing the intention to be bound to either the joint venture or solely to Buck's Electric, Inc. In this regard, H & N states that the law governing joint ventures clearly provides that either joint venturer can bind the other to a contract with a third party. See 48A C.J.S, Joint Ventures, § 64 (1981).

In our opinion, H & N's arguments are without legal merit. The issue is not whether H & N Electric, Inc., intended to be bound under the contract, but whether the surety was legally binding itself to incur the liability of only Buck's Electric, Inc., when it issued the bond in the name of the joint venture. Clearly, in accordance with the law of suretyship as stated above, the surety here was not clearly bound to incur the debts of Buck's Electric, Inc. While it may have been the intent of the surety to incur the debts of the joint venture or the individuals of the joint venture as stated in the affidavit, this fact cannot be conclusively determined from the bid and bid bond of H & N, without resort

to the subsequent post-bid opening explanation. Therefore,
we find that the bid properly was rejected as nonresponsive.

The protest is denied.

for *Seamus Egan*
Harry R. Van Cleave
General Counsel