



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Worth Contracting, Inc.

File: B-228553

Date: October 28, 1987

DIGEST

A commercial bid bond form that limits the surety's obligation to the difference between the amount of the offeror's bid and the amount of a procurement contract materially differs from the standard form government bid bond and thus renders a bid nonresponsive.

DECISION

Worth Contracting, Inc., protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. N62467-86-B-0623.

We dismiss the protest without obtaining a report from the Navy since it is clear from our analysis of the material furnished by Worth, that the protest is without legal merit. 4 C.F.R. § 21.3(f) (1987).

The Naval Facilities Engineering Command, Southern Division, issued the solicitation for interior repairs to a hanger at the Naval Air Station, Jacksonville, Florida. The Navy rejected Worth's bid because the bid bond accompanying it qualified the rights of the government as to the amount of recovery if Worth opted not to perform. Worth disputes the Navy rationale and maintains that it is entitled to contract award as the low responsive, responsible bidder.^{1/}

^{1/} No award has been made because the next low bid was in excess of the government estimate by 24 percent. This bid also exceeded Worth's bid by \$257,000. The Navy has decided to cancel this solicitation and plans to readvertise in hopes of obtaining more competitive bids.

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The solicitation required the submission of a bid guarantee and a standard form 24 (SF 24)^{2/} was provided in the solicitation package for use by the bidder. Worth instead submitted a form furnished by its surety, United States Fidelity and Guaranty Company (USF&G).

A bid guarantee assures that the bidder will not withdraw its bid within the time specified for acceptance and, if required, will execute a written contract and furnish all required bonds. When the guarantee is in the form of a bid bond, it secures the liability of a surety to the government if the holder of the bond defaults by failing to fulfill these obligations. O.V. Campbell and Sons Industries, Inc., B-216699, Dec. 27, 1984, 85-1 C.P.D. ¶ 1; Trans Alaska Mechanical Contractors, B-204737, Sept. 29, 1981, 81-2 C.P.D. ¶ 268.

The Navy determined that Worth's bond was unacceptable because it did not provide the government with the same protection afforded by the SF 24. The Worth bond limited the government's recovery in the event of default to the difference between the amount of Worth's bid and the amount for which the government legally contracted with another party to perform the same work. An SF 24, however, permits the government to recover "any cost of procuring the work which exceeds the amount of the bid."

Worth contends that the Navy is relying on "form over substance" in rejecting its bid, because there is no substantial difference between the SF 24 and the bid bond it submitted from USF&G. Worth is correct that use of a commercial bid bond form, rather than an SF 24, is not per se objectionable, since the sufficiency of the bond depends not on its form, but on whether it represents a significant departure from the rights and obligations of the parties as set forth in the SF 24. Perkin-Elmer, 63 Comp. Gen. 529 (1984), 84-2 C.P.D. ¶ 158. However, Worth is incorrect that there is no substantial difference in the bid bonds at issue.

The bid bond form submitted by Worth is identical to the USF&G form submitted by the contractor in D.B. Johnson Construction Co., Inc., B-224390, Sept. 10, 1986, 86-2

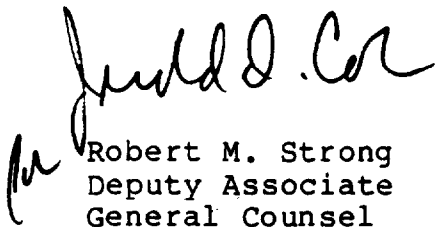
^{2/} Federal Acquisition Regulation, 48 C.F.R. § 53.301-24 (1986).

C.P.D. ¶ 284.3/ In D.B. Johnson, we held that the Army Corps of Engineers properly rejected the bid submitted by the protester because the wording of the bond submitted with that bid, which is identical to Worth's:

" . . . by its express terms, limits the recovery of the government in case of default to the difference between the amount of the protester's bid and the amount of a replacement contract, provided that such difference does not exceed the penal sum. The surety's liability, as set forth in this bond, thus significantly differs from the rights afforded the government under SF-24" D.B. Johnson Construction Co., Inc., B-224390, supra, ¶ 284 at p. 3.

In support of its argument that its bid bond does not differ significantly from an SF 24, Worth rhetorically asks "What other damages could the government possibly sustain other than the differential between obtaining another contractor and the low bidder's price?" As we recognized in D.B. Johnson, the bid bond guarantee is available to offset all costs of reprocurement of the goods or services in question, i.e., administrative costs or the cost of performing in-house. See Kiewit Western Co., 65 Comp. Gen. 54 (1985), 85-2 C.P.D. ¶ 497. Thus, a promise merely to cover the differences in bid prices provides insufficient protection to the government.

We therefore conclude that the Navy properly rejected Worth's bid as nonresponsive. The protest is dismissed.


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3/ In its protest, Worth argues that D.B. Johnson cannot be relied upon as precedent because the form involved in that case was not available in the reported decision. Contrary to this assertion, we are not constrained from using the D.B. Johnson decision as precedent in this matter. Moreover, as indicated above, an examination of the file in D.B. Johnson reveals that the bid bond form in that case is identical to the form used by Worth and both were issued by USF&G.