



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: JC Construction Company
File: B-229486
Date: December 29, 1987

DIGEST

1. Evidence of the authority of surety's agent to sign bid bond on behalf of the surety generally must be furnished with a bid prior to bid opening, and failure to furnish it renders bid nonresponsive.
2. A nonresponsive bidder is not an interested party under General Accounting Office Bid Protest Regulations to protest eligibility and standing of bidder for award where there are other bids which could be accepted since the protester does not have the requisite direct economic interest in the outcome of the matter.

DECISION

JC Construction Company protests the rejection of its low bid and award to C. Smith Construction under invitation for bids (IFB) No. R2-09-87-08 issued by the United States Forest Service for construction services to remodel the Forest Service garage building in Durango, Colorado. The agency determined that JC's bid bond was defective because it was not accompanied by a valid power of attorney attesting to the authority of the attorney-in-fact as the surety's agent and, therefore, that the bid was nonresponsive.

We deny the protest in part and dismiss it in part.

On July 15, 1987, bids were opened as scheduled by an agency field representative in Durango, Colorado. JC's bid was accompanied by a bid bond naming an attorney-in-fact as the surety agent for Contractors Bonding and Insurance Company of Seattle, Washington. However, the field representative noted that the bid bond was not accompanied by a power of attorney form authorizing the named attorney-in-fact to bind the surety company. JC contends that the field representative waived this irregularity by requesting that

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JC provide the power of attorney, which JC was able to provide within 1 hour after bid opening. Consequently, the field representative found JC to be the apparent low bidder. Upon further review by the contracting officer in Lakewood, Colorado, JC's bid was determined to be nonresponsive for failure to provide a power of attorney prior to bid opening and award was made to the next lowest responsive bidder. This protest followed on October 26.

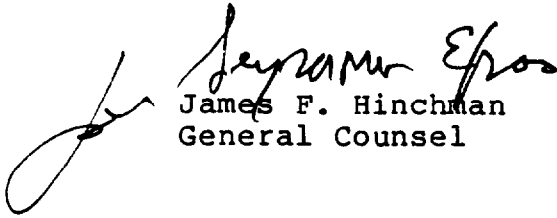
A bid bond or bid guarantee is a type of security that assures that the bidder will not withdraw its bid within the time specified for acceptance and, if required, will execute a written contract and furnish payment and performance bonds. The purpose of the bid bond is to secure the liability of a surety to the government if the bidder fails to fulfill these obligations. Baldi Brothers Constructors, B-224843, Oct. 9, 1986, 86-2 CPD ¶ 418; Langaker, Marine Inc., B-220556, Dec. 3, 1985, 85-2 CPD ¶ 623; Desert Dry Waterproofing Contractors, B-219996, Sept. 4, 1985, 85-2 CPD ¶ 268. Thus, we repeatedly have held that a bid bond in the proper amount is regarded as defective, rendering the bid nonresponsive, if it is not clear that it will bind the surety. Baldi Brothers Constructors, B-224843, *supra*; Sevcik-Thomas Builders and Engineers Corp., B-215678, July 30, 1984, 84-2 CPD ¶ 128. The reason for this is that under the law of suretyship no one can be obligated to pay the debts or to perform the duties of another unless that person expressly agrees to be bound. Andersen Construction Co.; Rapp Constructors, Inc., 63 Comp. Gen. 248 (1984), 84-1 CPD ¶ 279. We have held that it is not proper to consider the reasons for the nonresponsiveness, whether due to mistake or otherwise. A.D. Roe Co., Inc., 54 Comp. Gen. 271 (1974), 74-2 CPD ¶ 194.

The absence of a power of attorney in this instance created an uncertainty whether the signer of the bid bond was duly authorized to bind the surety, and therefore the defect could not be waived as a minor informality. See Baldi Brothers Constructors, B-224843, *supra*; Desert Dry Waterproofing Contractors, B-219996, *supra*. In this regard, there was no way to establish the attorney-in-fact's authority from the bid absent the power of attorney form. Since the responsiveness of a bid must be determined solely from the bid documents, the fact that the attorney-in-fact's authority may later have been established is of no consequence. See Baldi Brothers Constructors, B-224843, *supra*; Nova Group, Inc., B-220626, Jan. 23, 1986, 86-1 CPD ¶ 80.

In its comments on the agency report, JC challenges the responsiveness of the C. Smith bid, the eligibility of C. Smith for award and whether C. Smith was next low under the

award criteria. In view of our decision that JC's bid is nonresponsive, we need not consider these matters because JC is not an interested party under our Bid Protest Regulations, 4 C.F.R. § 21.0(a) and 21.1(a) (1987). Since JC's bid was properly determined nonresponsive, and there are other eligible bidders which could be awarded the contract if C. Smith was found ineligible for award, JC lacks the requisite direct economic interest in the resolution of this matter. Adrian Supply Co., B-225630.2, May 7, 1987, 87-1 CPD ¶ 489.

The protest is denied in part and dismissed in part.


James F. Hinchman
General Counsel