



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Maitland Brothers Company

File: B-233871

Date: March 6, 1989

DIGEST

1. There is no discrepancy between the legal entity named on a bid and a bid bond where the principal on the bid bond is an operating unit of the nominal bidder.
2. Protest that awardee's project manager did not have authority to sign the firm's bid is denied where the bid bond was signed by the company's vice president.

DECISION

Maitland Brothers Company protests the award of a contract to any other bidder under invitation for bids (IFB) No. DACW45-88-B-0102, issued by the United States Army Corps of Engineers for closing monitoring wells, grading and capping the landfill and installing chain link security fence at the Heleva Landfill Superfund Site, Pennsylvania.

We deny the protest.

At bid opening on October 12, 1988, the Corps received eight bids. IT Corporation was the low bidder with a price of \$4,950,000; Chemical Waste Management, Inc. was second low with a price of \$5,372,045 and the protester was third low with a price of \$5,850,000. The Corps rejected IT as nonresponsive because of problems with the individual sureties on its bid bond.^{1/} It then reviewed the second and third low bids and advised the protester that Chemical Waste Management was the next lowest responsive, responsible bidder.

^{1/} IT protested the rejection and its protest with the agency is pending.

0-4784/138111

Maitland argues that Chemical Waste Management's bid should be rejected as nonresponsive because the name of the principal on the bid bond, "ENRAC, A Division of Chemical Waste Management, Inc." was not the same as the name on the bid, "Chemical Waste Management, Inc." Maitland also maintains that since the power of attorney of the person executing the bond only authorized the issuance of bonds to "Waste Management, Inc., and subsidiaries," the issuance of a bond to a "division" of Chemical Waste Management, rather than a subsidiary of Waste Management, was improper. The protester further complains that the awardee's bid is defective because it was signed by the firm's project development manager who did not indicate that he was a corporate officer or was otherwise authorized to bind the corporation.

Bid guarantee requirements are a material part of an IFB. Opine Construction, B-218627, June 5, 1985, 85-1 CPD ¶ 645. 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 or corrected after opening. Enesco Environmental Services, Inc., B-224266, Oct. 9, 1986, 86-2 CPD ¶ 415. Nevertheless, the name of the bidding entity need not be the same on the bid and on the bond so long as it can be established that there is no discrepancy between the legal entity named on each. General Electric Co., et al., B-228140 et al., Jan. 6, 1988, 67 Comp. Gen. ____, 88-1 CPD ¶ 6.

Here the record shows that Chemical Waste Management's Environmental Remedial Action Division (ENRAC), the bond principal, is not an independently incorporated concern or a separate or distinct legal entity but, rather, is an operating unit of Chemical Waste Management. The seal on the firm's bid bond is that of Chemical Waste Management, the signature block on the cover letter submitted with the bid designates the sender as "Chemical Waste Management, Inc., Environmental Remedial Action Division," and the address of ENRAC on the bid bond and that on the bid for Chemical Waste Management are the same. Further, the record contains an affidavit from Chemical Waste Management stating that ENRAC is a division of the firm, not a separately incorporated entity, and a prospectus from Chemical Waste Management indicating that ENRAC is its division. Consequently, we find no basis upon which to disagree with the agency's conclusion that there is no discrepancy between the legal entity named on the bid and the bid bond. General Electric Co., et al., B-228140 et al., supra.

Concerning the power of attorney of the individual executing the bond, since that document permitted the issuance of bonds to Waste Management and its subsidiaries and Chemical Waste Management is a subsidiary of Waste Management, it is clear that the individual could issue a bond for Chemical Waste Management. Further, since we have concluded that ENRAC is a division of Chemical Waste Management and not a separate legal entity, it follows that a bond issued by that same individual in the name of ENRAC would be enforceable.

With regard to Maitland's contention that the awardee's project development manager may not have been authorized to sign the firm's bid, Chemical Waste Management's intent to be bound by the bid is evidenced by the signature of its vice president on the bid bond. See The Commercial Siding and Maintenance Co., B-219764, Aug. 8, 1985, 85-2 CPD ¶ 151.

The protest is denied.



James F. Hinchman
General Counsel