



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter: Water & Power Technologies, Inc.

File: B-244639

Date: July 16, 1991

George Laird for the protester.
Edwin Rodriguez, Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

The failure to provide a bid bond with a bid is a failure to meet a material requirement of a solicitation which makes the bid nonresponsive. Provision of a bid bond after bid opening cannot cure the nonresponsiveness of the bid, nor does it constitute an acceptable late modification.

DECISION

Water & Power Technologies, Inc. protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. DAAC89-91-B-0146 issued by the Tooele Army Depot for reverse osmosis systems and related water treatment supplies.

The protest is dismissed as it does not raise a legally valid ground of protest.


Water & Power's bid was the lowest of the eight received, but the contracting officer rejected it as nonresponsive because the protester failed to submit a bid bond with the bid as required by the IFB. The protester argues that its bid should have been accepted notwithstanding its failure to supply the bid bond and, in the alternative, that it should be permitted to submit the bond after bid opening as a late modification of an otherwise successful bid pursuant to Federal Acquisition Regulation (FAR) § 14.304-1(e).

A bid guarantee provision in a solicitation is a material requirement and the failure to meet such a requirement before bid opening makes a bid nonresponsive. Lava Tap Cleaning Servs., Inc., B-234728, May 18, 1989, 89-1 CPD ¶ 475. A bidder's submission of a bid guarantee after bid opening cannot cure the failure to submit a guarantee with its bid since a nonresponsive bid cannot be made responsive after bid opening. Id. Similarly, a bid guarantee offered after bid opening does not constitute an acceptable late bid

modification because a nonresponsive bid is not an "otherwise successful" one under FAR § 14.304-1(e).

Finally, the fact that the protester submitted the lowest bid is not determinative. The public interest in strictly enforcing competitive bidding procedures outweighs the monetary advantage which the government might gain in any particular case by a violation of those procedures, James C. Bateman Petroleum Servs., Inc., dba "SEMCO", B-228252, Oct. 5, 1987, 87-2 CPD ¶ 337.

The protest is dismissed.


for John Brosnan
Assistant General Counsel