



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Kentucky Bridge and Dam, Inc.

File: B-243394.2

Date: August 8, 1991

Gerald M. Woodcox for the protester,
Paul M. Fisher, Esq., and James A. Apards, Esq., Department of
the Navy, for the agency.
Tania L. Calhoun and James A. Spangenberg, Esq., Office of the
General Counsel, GAO, participated in the preparation of the
decision.

DIGEST

Low bid is responsive, even though bid opening officer stated, during bid opening, that a power of attorney was not attached to that bid's bid bond, where the record indicates the power of attorney was included in the bid documents and the protester, who attended the bid opening, did not examine the bid.

DECISION

Kentucky Bridge and Dam, Inc. (KBD) protests the award of a contract for exterior painting of family housing to Kimel, Inc. under invitation for bids (IFB) No. N62766-90-B-2011, issued by Naval Facilities Engineering Command, Naval Station Marianas, Guam. KBD contends that Kimel's bid should have been rejected as nonresponsive since its submitted bid bond was not accompanied by a power of attorney.

We deny the protest.

Seven bids were opened on the bid opening date of March 13, 1991. Kimel was the low bidder at \$354,475, and KBD was the second low bidder at \$420,285. During bid opening, the presiding contract specialist commented aloud and wrote in the abstract of offers that there appeared to be no power of attorney attached to Kimel's bid bond. Subsequent to bid opening, the contract specialist attests that she conducted a more detailed examination of Kimel's bid and found that a properly executed power of attorney was present in the bid documents. The agency made award to Kimel on April 29.

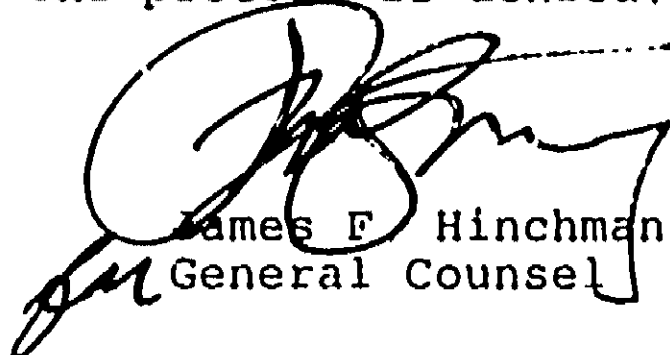
It is true that evidence of the authority of the surety's agent to bind the surety by signing the bid bond on its behalf, e.g., a valid power of attorney, generally must be furnished with a bid prior to bid opening, and the failure to furnish this information renders a bid nonresponsive. JC Constr. Co., B-229486, Dec. 29, 1987, 87-2 CPD ¶ 640.

While KBD contends that Kimel's bid bond was not accompanied by a valid power of attorney at the time of bid opening, thus rendering it nonresponsive, KBD provides no evidence in support of this contention, other than the contract specialist's statement at bid opening. The agency claims the power of attorney did accompany the bid at the time of bid opening, but the contract specialist simply overlooked it. As evidence, the agency provides the contract specialist's affidavit, in which she attests that her comment, made in good faith, was mistaken.

The purpose of a public bid opening is to protect both the public interest and the bidders against any form of fraud, favoritism or partiality, and to leave no room for suspicion. VACAR Battery Mfg. Co., Inc., B-223244.2, June 30, 1986, 86-2 CPD ¶ 21. As a component of this protection, once bids are opened, interested parties are permitted to examine the bids submitted. Federal Acquisition Regulation § 14.402-1(c). This allows bidders to see for themselves whether competing bids are responsive. KBD, which had a representative at the bid opening, had the opportunity to verify the absence or presence of Kimel's power of attorney, but did not avail itself of that opportunity. KBD's failure to examine Kimel's bid means KBD's allegation that the power of attorney was not part of Kimel's bid at the time of bid opening is unsupported.

In the absence of affirmative evidence indicating that the power of attorney was inserted into Kimel's bid documents after bid opening, we conclude that Kimel's bid was responsive.

The protest is denied.


James F. Hinchman
General Counsel