



Comptroller General
of the United States

Washington, D.C. 20548

Hasfurther

144736

Decision

Matter of: Environmental Management Services, Inc.

File: B-244784

Date: August 26, 1991

Sam Z. Gdanski, Esq., for the protester.
Paul M. Fisher, Esq., Department of the Navy, for the agency.
David Hasfurther, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

A rider to a bid bond, which by its language limits the liability of the surety and the bidder and which may be inferred to apply to the required performance and payment bonds in the event of award, renders the bid nonresponsive.

DECISION

Environmental Management Services, Inc. (EMS) protests the rejection of its low bid as nonresponsive under invitation for bids (IFB) No. N62477-89-B-3014, issued by the Department of the Navy, Patuxent Naval Air Station, for the removal of asbestos-containing materials and the installation of asbestos-free insulation at the Naval Air Test Center. EMS' bid was found nonresponsive due to a rider regarding toxic materials that was attached to its bid bond.

We dismiss the protest.

The IFB required all bidders to submit a bid guarantee with their bids. EMS submitted a bid bond and attached to it a "Rider to Bond Involving Toxic Material." That rider states that the bond is "subject to the following express conditions which shall survive the release and discharge Surety from any further liability of its performance and payment obligations under its bond." The rider's conditions provide that the bond is not a substitute for insurance; restrict the time for suits against EMS and the surety under the bond; limit any right of action to the obligee (the government); and exclude the surety from liability for any negligence of EMS and its agents resulting in personal injuries or property damage.

In our view, the Navy properly rejected EMS' bid as non-responsive. When required, a bid guarantee is a material part of the bid and by its terms must clearly establish the requisite liability of the surety or the bid must be rejected as nonresponsive. See Tom Mistick & Sons Inc., B-222326, Apr. 3, 1986, 86-1 CPD ¶ 323. By stating the conditions in terms of survival of release and discharge of the surety and its references to performance and payment obligations, the rider indicates an intent to limit materially the liability of EMS and its surety under the required performance and payment bonds. It was not unreasonable for the Navy to reject the bid as non-responsive. Curry Env'tl. Serv., Inc., B-228214, Dec. 9, 1987, 87-2 CPD ¶ 570.

EMS contends that the rider should have had no effect on the responsiveness of its bid since asbestos is not defined as a toxic material (it is a "hazardous" material) and the rider, accordingly, did not limit EMS' or its surety's liability. The status of asbestos as hazardous, not toxic, material is a distinction without a difference here. It is clear from the attachment of the rider to the bid bond that EMS and its surety considered asbestos a dangerous substance and the rider was a means of limiting their liability in accordance with the conditions listed in the rider.

The protest is dismissed.


Michael R. Golden
Assistant General Counsel