

Calhoun
1452-45



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: New Solid, Ltd.

File: B-246357

Date: February 7, 1992

Eugene Harmon for the protester.
Leigh Ann Holt, Esq., General Services Administration, for
the agency.
Tania L. Calhoun and Andrew T. Pogany, Esq., Office of the
General Counsel, GAO, participated in the preparation of the
decision.

DIGEST

Where bid is submitted in the name of one person, but is
accompanied by bid bond which identifies that person and
also another individual as principal, the bond is materially
defective, requiring rejection of the bid as nonresponsive,
because the surety's obligation under the bond is unclear.

DECISION

New Solid, Ltd. protests the rejection of its bid as
nonresponsive under invitation for bids (IFB) No. GS-07P-91-
JWC-0121, issued by the General Services Administration
(GSA) for custodial and related services at the Byron G.
Rogers Federal Building in Denver, Colorado. GSA determined
that New Solid's bid was nonresponsive because there was a
discrepancy between the legal entity shown on the bid and
the legal entity shown on the bid bond.

We dismiss the protest.

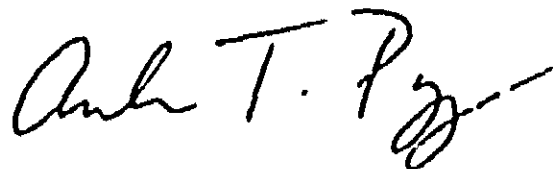
The solicitation was issued on July 31, 1991. Of the six
bids received by the September 11 bid opening, New Solid was
the second low bidder. The low bidder was found
nonresponsive and its bid was rejected, making New Solid the
apparent low bidder. In the bid form, the bidder was
identified as "Eugene E. Harmon, owner" and the bid was
signed by Eugene E. Harmon. With its bid, New Solid
submitted a bid bond that identified the principal on the
bond as "Eugene E. and Ingrid Harmon," and was signed by
Eugene E. Harmon. GSA determined that the bid bond was
defective because the principal shown on the bid bond
differed from the bidder named in the bid. This protest
followed.

New Solid contends that its bid is responsive because the bid bond does not name a principal different from the nominal bidder, but that it simply adds a name to that of the nominal bidder; as a result, the government's interest is allegedly protected. We do not agree.

Bid bond requirements are a material part of the IFB, and a contracting officer cannot waive a failure to comply with such provision. Design For Health, Inc., 69 Comp. Gen. 712 (1990), 90-2 CPD ¶ 213. The sufficiency of a bid bond depends on whether the surety is clearly bound by its terms; when the liability is not clear, the bond is defective. This rule is prompted by the rule of suretyship that no one incurs a liability to pay the debts of another unless he expressly agrees to be bound. G&C Enters., Inc., B-233537, Feb. 15, 1989, 89-1 CPD ¶ 163. Moreover, a surety under a bond in the name of more than one principal is not liable for the default of one of them. A.D. Roe Co., Inc., 54 Comp. Gen. 271 (1974), 74-2 CPD ¶ 194. For this reason, the principal listed on the bid bond must be the same as the nominal bidder. Mount Diablo Corp., Inc., B-228193, Nov. 10, 1987, 87-2 CPD 475.

Therefore, the fact that the protester allegedly only intended to add the name of another individual to the bid bond without qualifying its obligation and liabilities is irrelevant. See Opine Constr., B-218627, June 5, 1985, 85-1 CPD ¶ 645; Clyde McHenry, Inc., B-224169, Sept. 25, 1986, 86-2 CPD ¶ 352; JDL Constr., Inc., B-216733, Mar. 4, 1985, 85-1 CPD ¶ 268.

Accordingly, the protest is dismissed.



Andrew T. Pogany
Acting Assistant General Counsel