



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Zolman Construction & Development, Inc.

File: B-247117

Date: March 13, 1992

Javad Zolfaghari for the protester,
Frank Kotaski, Esq., and Paul M. Fisher, Esq., Department
of the Navy, for the agency.
Susan K. McAuliffe, Esq., and Michael R. Golden, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Bid which did not include bid bond was properly rejected despite bidder's assertion, supported by employee's affidavit, that bond was included with its bid package submitted to agency prior to bid opening. In absence of independent evidence to establish validity of bidder's assertion, bid may not be considered responsive.

DECISION

Zolman Construction & Development, Inc. protests the rejection of its bid as nonresponsive for failure to submit a bid bond with its bid under invitation for bids (IFB) No. N68711-91-B-0105, issued by the Department of the Navy for the construction of a Close Quarters Battle Range at the Marine Corps Base, Camp Pendleton, California.

We deny the protest.

The solicitation, issued on November 8, 1991, required a bid guarantee for 20 percent of the bid price to be submitted with each bid. Fifteen bids were received by the agency by the December 10 bid opening. The apparent low bidder at bid opening was rejected for failure to submit a proper bid bond. Zolman was the next apparent low bidder. The Navy states that the bid opening official at bid opening announced that Zolman's bid package failed to include the required bid guarantee and that the abstract of offers prepared at bid opening shows that no bid guarantee information (i.e., type and amount of bid security) was recorded for Zolman, as it had been for all of the other bidders. The Navy has provided declarations from the bid

opening official, two bid opening assistants, and the fourth low bidder's bid opening representative to confirm the fact that this announcement was made and that no one at bid opening objected to the announcement. Consequently, the Navy found Zolman's bid defective for failure to contain the required bid guarantee and, by letter of December 13, rejected the Zolman bid as nonresponsive. This protest followed.

Zolman contends that it did submit a duly executed bid bond with its bid. The protester has provided an unsigned copy of the bid bond it allegedly submitted with its bid and an affidavit of the Zolman employee who submitted the bid and attended the bid opening. (Although the bid opening attendance sheet does not list a representative for Zolman, Zolman explains that its employee mistakenly signed the bid opening attendance sheet as representing his former employer's company.) The Zolman employee states that the bid bond was in the sealed bid envelope he submitted shortly before bid opening and that he did not hear the bid opening official's announcement that no bid guarantee was provided by the protester--in fact, the Zolman employee states that he heard the official say that a bond was provided by Zolman. Another bidder has submitted a statement asserting that its representative did not hear the official's alleged announcement at bid opening about Zolman's failure to submit a bid bond. The protester has also submitted an affidavit from the attorney-in-fact of the surety company that allegedly executed the bond for Zolman attesting to the December 6 execution of the document and its delivery to the president of Zolman. Although the protester does not question the good faith of the agency here, Zolman essentially contends that since the firm's independent search for the bid bond after bid opening was unsuccessful, the bond must have been submitted with its bid and subsequently misplaced by the agency.


When required by a solicitation, a bid bond is a material part of a bid which must be furnished with it. A.D. Roe Co., Inc., 54 Comp. Gen. 271 (1974), 74-2 CPD ¶ 194. A bid which does not include the required bid bond is properly rejected as nonresponsive despite the bidder's assertion, supported by affidavits of its employees, that the bond was included in its bid package where there is no independent evidence establishing the validity of the bidder's assertion. Washington Patrol Serv., Inc., B-196997, Mar. 25, 1980, 80-1 CPD ¶ 220; Roderick Constr., B-193116, Jan. 30, 1979, 79-1 CPD ¶ 69; P. W. Parker, Inc., B-190286, Jan. 6, 1978, 78-1 CPD ¶ 12.

The evidence furnished by Zolman consists of statements of its own employee, another bidder's representative who does not state that she actually saw the bid bond submitted with

the protester's bid, and the attorney-in-fact of the surety company. The statement by the employee of the firm that the bond was in the sealed bid envelope does not, without independent corroborating evidence, establish that the bond was in the bid envelope. Here, in fact, all other evidence, including eyewitness statements on behalf of the agency and the bid abstract, supports the agency's position that the bond was not in the bid envelope. P. W. Parker, Inc., supra. Further, the other evidence submitted by Zolman is not dispositive of whether or not the envelope contained the bond. The surety can only attest to the execution of the bond and not the alleged submission by Zolman to the Navy prior to bid opening. The statement of another bidder that the bid opening official did or did not announce a bid bond defect in Zolman's bid at bid opening is inconsequential here since no one saw the bid bond in the hands of the agency officials. Even assuming the bid opening official did announce at bid opening that the bid included a bid bond, which version of the facts is disputed by the Navy officials and another bidder, such announcement alone is not conclusive where subsequent review of the bid shows that the bond is missing and there is no independent evidence to show that the bond was furnished prior to bid opening. See id.

Since it cannot be established that a bid bond was out of the control of the bidder and in the hands of the Navy prior to bid opening, the rejection of Zolman's bid as nonresponsive was proper.

Accordingly, the protest is denied.


for James F. Hinchman
General Counsel