

McDermott
147668



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Reliable Electric Construction, Inc.

File: B-250092

Date: September 23, 1992

Tom Coughlin for the protester,
Lee Ann Holt, Esq., General Services Administration, for the
agency,
Victoria McDermott, Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Bid is nonresponsive where principal listed on the bid bond submitted with the bid and the nominal bidder named on the bid are not the same legal entity.

DECISION

Reliable Electric Construction, Inc. protests the rejection of a bid under invitation for bids (IFB) No. GS-07P-92-JXC-0092, issued by the General Services Administration (GSA) for retrofit lighting at the Denver Federal Center, Lakewood, Colorado. Reliable alleges that the agency improperly determined that the bid bond submitted with the bid was defective.

We dismiss the protest.

The IFB required the submission of a bid bond in the amount of 20 percent of the bid. Six bids were received in response to the solicitation. "Nova Lighting Electrical Services, Inc., A Division of Reliable Electric Constr., Inc." was the low bidder with a total bid price of \$247,512.82. The bid was signed by Thomas J. Coughlin, General Manager. In the representations and certification section under "Corporate Status," the bid was checked that Nova was a "Corporate Entity." In the same section, under "Common Parent," it was represented that the "[o]fferor is not owned or controlled by a common parent." Under the

heading "Type of Business Organization" in the representation and certifications, the bid stated:

"The bidder, by checking the applicable box, represents that (a) it operates as x a corporation incorporated under the laws of the state of Colorado."

The bid was accompanied by a bid bond, issued by a corporate surety, which referred to the instant IFB and had a penal sum of 20 percent of the bid price. The bond, however, identified "Reliable Electric Construction, Inc." as the principal on the bid. The bond was executed by John A. Prilika, Vice-President, on behalf of the principal.

GSA determined that the bid guarantee was defective because Nova is a corporation in its own right, separate and distinct from Reliable. The agency determined, after additional inquiries were made of Nova and cognizant state officials regarding each company's status, that the principal identified on the bid bond and the nominal bidder were not the same legal entity. Since this difference called into question the enforceability of the bid bond, the bid was rejected as nonresponsive.

Reliable argues that Nova is a subsidiary of Reliable and that the bid bond "clearly matches" the bid because it "names Reliable Electric Construction as bidder and bid bond holder." We find that the bid was properly rejected as nonresponsive because of the discrepancy between the bidder, as shown on the bid, and the principal, as shown on the bid bond.

The submission of a bid bond is a material element of a bid which affects its acceptability. If uncertainty exists at the time of bid opening that the bidder has furnished a legally binding bond, the bond is unacceptable and the bid therefore must be rejected as nonresponsive. The rule is prompted by the rule of suretyship that no one incurs liability to pay the debts of another unless he expressly agrees to be bound. Design for Health, Inc., 69 Comp. Gen. 712 (1990), 90-2 CPD ¶ 213. For this reason, the principal listed on the bid bond must be the same legal entity as the nominal bidder since there is doubt whether a bid bond that names a principal different from the nominal bidder clearly binds the surety. Mount Diablo Corp., Inc., B-228193, Nov. 10, 1987, 87-2 CPD ¶ 475. Such a discrepancy between the bid bond principal and nominal bidder may not be waived as a minor informality. Id.

In this case, the legal entity named on the bid was different from the entity named on the bid bond. This fact was indicated by Nova's bid and Reliable's bid bond, and was

confirmed by GSA. In addition, there is no reference to Nova anywhere on the bid bond. From these circumstances, we cannot conclude that the surety named on the bid bond would necessarily be liable for the default of Nova, since the legal entity named on the bid is not the same as the legal entity listed on the bid bond. See Design for Health, Inc., supra; compare Maitland Bros. Co., B-233871, Mar. 6, 1989, 89-1 CPD ¶ 244 (where the nominal bidder was an operating unit of the firm named as principal on the bid bond, and it was clearly established that the bid bond principal and nominal bidder were the same legal entity).

The protest is dismissed.



James A. Spangenberg
Assistant General Counsel