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Comptroller General  
of the United States  
Washington, D.C. 20548

## Decision

**Matter of:** The Riley Corporation--Reconsideration

**File:** B-250737.2

**Date:** December 7, 1992

Karl Dix, Jr., Esq., Smith, Currie & Hancock, for the protester.  
Paul E. Jordan, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Request for reconsideration is denied where agency properly rejected protester's bid bond as ambiguous, and protester essentially raises same matters on reconsideration as were raised in its original protest.

### DECISION

The Riley Corporation requests reconsideration of our dismissal of its protest challenging the rejection of its bid under invitation for bids (IFB) No. 647-8-92, issued by the Department of Veterans Affairs (VA), for update of boiler plant equipment at a VA medical center. We dismissed Riley's protest because it failed to establish a basis for challenging the agency's action.

We deny the request for reconsideration.

According to Riley's protest, the VA rejected Riley's bid because the VA concluded that the bid bond was in the name of a corporate bidder and an individual, as a joint venture, while the bid was in the name of the corporate bidder. However, Riley explained that the bid bond form "clearly indicated" that the Georgia corporation was the principal.

In dismissing the protest, we found that the protest did not include sufficient information to establish the likelihood that the VA violated applicable procurement laws or regulations. Our decision was based upon the discrepancy in the identity of the principal between the bid bond and the

bid. Although the bid was made by Riley, the bid bond listed as principal "The Riley Corporation and Walter R. Hope, Individually as an Open Joint Venture." The bond was signed by Mr. Hope as "President" and as "Individual." Since the named bidder and the principal named on the bid bond were not the same entity, and there was no allegation that anything in the bid submission established that the two were actually the same entity, Riley failed to provide any basis to object to the agency's decision to reject its bid. See The Scotsman Group, Inc., B-245634, Jan. 13, 1992, 92-1 CPD ¶ 57.

In its request for reconsideration, Riley argues that we treated as "fact" the allegation of the VA that the principals on the bid and bid bond were different. While conceding that the bid bond lists the joint venture as the principal, Riley argues that the bond form otherwise makes clear that only Riley was the principal. Specifically, Riley observes that: in the block entitled "Type of Organization," "Corporation," not "Joint Venture" is checked; it is listed as a Georgia corporation, and corporate filings with Georgia clearly indicate that Riley is "the only corporation at the address listed in the principal section of the bid bond"; and there is no incorporated joint venture of Riley and Mr. Hope, individually. We disagree that these matters make clear the identity of the principal on the bid bond.

Bid bond requirements are a material part of the IFB, and a contracting officer cannot waive a failure to comply with a bond 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. The fact that a bidder may have simply added another individual to a bid bond without intending to qualify the bidder's obligation does not cure the defect in the bond. New Solid, Ltd., B-246357, Feb. 7, 1992, 92-1 CPD ¶ 163.

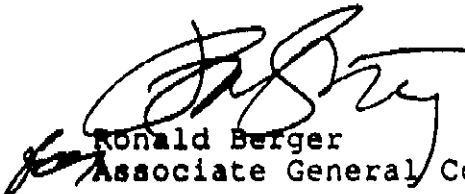
Here, Riley submitted a bid bond which created an ambiguity in the identity of the principal; while the bid names the corporation, the bond names a joint venture comprised of the corporation and its president, as an individual. Although

the protester constructs an explanation of consistency between the bid and the bond, it is unpersuasive. Further, the contracting officer was not obligated to interpret the ambiguous bid and bond by deductions and inferences in order to make the bid responsive. Rather, the bidder bears the primary responsibility for properly preparing its bid documents in such a fashion that the contracting officer can accept the bid with full confidence that an enforceable contract, conforming to all the requirements of the IFB, will result. See The Scotsman Group, Inc., supra.

A protest must include a detailed statement of the legal and factual grounds of the protest, which grounds must be legally sufficient. Bid Protest Regulations 4 C.F.R. §§ 21.1(c)(4), 21.1(e) (1992). These requirements contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. Robert Wall Edge--Recon., 68 Comp. Gen. 352 (1989), 89-1 CPD ¶ 335. Neither Riley's protest nor its request for reconsideration satisfies this requirement.

In expressing disagreement with our decision, the protester in essence repeats arguments it made previously. To obtain reconsideration, the requesting party must show that our prior decision may contain either errors of fact or law or present information not previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.12(a). The repetition of arguments made during our consideration of the original protest and mere disagreement with our decision do not meet this standard. R.E. Scherrer, Inc.--Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274.

The request for reconsideration is denied.

  
Ronald Berger  
Associate General Counsel