



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Secur-Data Systems, Inc.

File: B-255090

Date: February 2, 1994

Carl G. D'Allura for the protester.

Brenda Whittingham, Department of Agriculture, for the agency.

Katherine I. Riback, Esq., and Paul Lieberman, 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 that bond was included with its bid package submitted to the agency prior to bid opening. In absence of independent evidence to establish validity of bidder's assertion, bid may not be considered responsive.

DECISION

Secur-Data Systems, 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. IFB-00-93-B-926, issued by the Department of Agriculture for the purchase and installation of certain camera equipment in an agency building.

We deny the protest.

The solicitation required that bids exceeding \$25,000 include a bid guarantee, for 20 percent of the total bid price, not to exceed \$3,000,000. Four bids were timely received by the September 17, 1993, bid opening. Secur-Data was the apparent low bidder at bid opening. The contracting officer, who was the bid opening official, states that Secur-Data's bid package did not contain a bid bond. The contracting officer states that she reexamined the bids after bid opening, as is her practice, to make sure that no documents were overlooked that had been included with the bids. She concluded that Secur-Data's bid package did not contain a bid guarantee, and the abstract of offers shows

that "no bid bond" was recorded for Secur-Data.¹ The agency rejected Secur-Data's bid as nonresponsive for failure to contain the required bid guarantee. Award was made to A-Com, Inc. on September 22. This protest to our Office followed.

Secur-Data contends that it did submit a bid guarantee in the form of an irrevocable letter of credit with its bid package. As evidence that it included a bid guarantee with its bid package, Secur-Data submitted its own solicitation check list, which it states was completed during the preparation of its bid package, and which indicates that it had obtained a bid guarantee. The protester argues that it would not have failed to submit a bid guarantee which it went to effort and expense to obtain.

When required by a solicitation, a bid guarantee 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 guarantee is properly rejected as nonresponsive despite the bidder's assertion that the guarantee was included in its bid package where there is no independent evidence establishing the validity of the bidder's assertion. Zolman Constr. & Dev., Inc., B-247117, Mar. 13, 1992, 92-1 CPD ¶ 284.

Secur-Data's assertion that a bid guarantee was included in its bid package plus the information regarding the bid guarantee in its solicitation check list does not, without independent corroborating evidence, establish that the bid guarantee or letter of credit was in the envelope. In fact, the bid opening official's declaration and the bid abstract corroborate the agency's position that the bid guarantee was not in the bid envelope. Id. Since it cannot be established that a bid guarantee was out of the control of the bidder and in the hands of the agency prior to bid opening, the rejection of Secur-Data's bid as nonresponsive was proper.

The protest is denied.

Christine S. Melody
for Robert P. Murphy
Acting General Counsel

¹The agency has provided a declaration from the bid opening official/contracting officer that Secur-Data's bid package did not contain a bid guarantee or letter of credit.