

Matter of: MKB Constructors, Inc.

File: B-255098

Date: January 10, 1994

Richard W. Oehler, Esq., and Ted D. Billbe, Esq., Perkins Coie, for the protester.

David C. Groff, Esq., and Douglas R. Roach, Esq., Groff & Murphy, for General Construction Company, an interested party.

Ellen M. Evans, Esq., Diane D. Hayden, Esq., and Paul M. Fisher, Esq., Department of the Navy, for the agency.

Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Contracting agency properly rejected bid as nonresponsive where discrepancies between the principal listed on the bid bond submitted with the bid and the nominal bidder reasonably raised doubts as to the enforceability of the bond.

DECISION

MKB Constructors, Inc. protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. N62474-91-B-9737, issued by the Department of the Navy for repairs and improvements to Pier E at the Naval Station, Everett, Washington. The protester alleges that the agency improperly determined that the bid bond submitted with the bid was defective.

We deny the protest.

The agency received seven bids by the September 14, 1993, bid opening date. "MKB CONSTRUCTORS, 3647 STONE WAY NORTH, P.O. BOX 31449, SEATTLE, WA 98103," submitted the apparent low bid. The bid was signed by "DAVID M. MOOR, J.V. PARTNER." Although under the representations and certifications section, the bidder indicated that it operates as a joint venture, it did not identify the joint venture participants anywhere in the bid.

The IFB required bidders to submit a bid bond in the amount of 20 percent of the bid. With its bid, the protester submitted a bid bond on a Standard Form (SF) 24, issued by a corporate surety, for a penal sum of 20 percent of the bid price. The SF 24 identified the principal as "MKB Constructors, a Joint Venture of D.M. Moor Constructors Inc. and BECK Constructors, 3649 Stoneway Ave. N., Seattle, WA. 98103." The SF 24 was executed with three different signatures. The signature of "D. Moor" appears immediately below the typewritten name of "D.M. Moor Constructors." Under the typewritten name "BECK Constructors" appear the signatures of "S.D. Koon, President," on behalf of "Koon-Boen, Inc.," and "R.D. Egge, President," on behalf of "Cummins-Egge, Inc."

The Navy determined that the bid bond was defective because discrepancies between the name of the bidder on the bid and the principal on the bid bond called into question the enforceability of the bid bond. By letter dated September 20, the contracting officer notified the protester that its bid was rejected as nonresponsive. This protest followed.

The protester argues that there is no difference between the name of the nominal bidder and the principal identified on the SF 24. The protester points to the instructions for completing the SF 24 which require that the "full legal name and business address of the [p]rincipal" be provided. MKB Constructors states it identified itself as the principal by its full legal name on the bid bond, and points to the "TYPE OF ORGANIZATION" block of the SF 24 where it identified itself as a "JOINT VENTURE," which is consistent with its representation on the bid. The protester further contends that since the SF 24 requires the "principal" to execute the bond form, and since the principal in this case is a joint venture, the SF 24 was executed with signatures on behalf of D.M. Moor Constructors, and Koon-Boen Inc. and Cummins-Egge, Inc., the two entities that comprise Beck Constructors, itself a joint venture.

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 as to whether a bid bond is legally enforceable, the bond is unacceptable and the bid therefore must be rejected as nonresponsive. See Reliable Elec. Constr., Inc., B-250092, Sept. 23, 1992, 92-2 CPD ¶ 198. This rule derives from 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. A bid bond which names a principal different from the bidder named in the accompanying bid is deficient and the defect may not be

waived as a minor informality. J.A. Walker Co., Inc.;
James A. Walker, d/b/a J.A. Walker Co., B-236518, Nov. 17,
 1989, 89-2 CPD ¶ 474.

Here, the agency reasonably concluded that the discrepancies between the entity named on the bid and the principal named on the bid bond raised doubts as to the enforceability of the bond. If, as the protester asserts, the SF 24 contains the full legal name of the principal, i.e., the bidder, then clearly the same legal entity was not named on the bid. It is not clear from the bid that the nominal bidder, "MKB Constructors," is a joint venture comprised of D.M. Moor Constructors, Inc. and BECK Constructors, as the bid bond indicates. In fact, neither Beck Constructors nor D.M. Moor Constructors are identified anywhere on the bid.

Further, David M. Moor signed the bid, identifying himself as "DAVID M. MOOR, J.V. PARTNER." This form of signature at a minimum suggested that Mr. Moor himself was a joint venture partner signing in an individual capacity; there was no reference to D.M. Moor Constructors, Inc. or Beck Constructors. In addition, the street address shown on the bid--"3647 STONE WAY NORTH, P.O. BOX 31449, SEATTLE, WA 98103"--is different from that shown on the bid bond--"3649 Stoneway Ave. N., Seattle, WA. 98103"--raising further doubts as to whether the principal named on the bond and the nominal bidder were the same legal entity. The fact that the bidder indicated on the bid and on the SF 24 that it operates as a joint venture is not dispositive. It is not readily apparent how Beck Constructors, D.M. Moor Constructors, Inc., Koon-Boen Inc., or Cummins-Egge, Inc.--the parties identified under "principal" on the SF 24--relate to the nominal bidder.

The protester also argues that public information available at the time of bid opening would have confirmed that the firm named on the bond and the nominal bidder was the same legal entity. See Gem Eng'g Co., B-251644, Mar. 29, 1993, 93-1 CPD ¶ 303. A contracting officer is not required, however, to conduct an investigation to determine whether the different named entities, that is, the party named on the bid and the principal named on the bid bond, are in fact the same legal entity. See The Scotsman Group, Inc., B-245634, Jan. 13, 1992, 92-1 CPD ¶ 57. In any event, contrary to the protester's contentions, the public information regarding the legal status of the bidder available at the time of bid opening would have introduced further ambiguities to an already unclear scenario.

After bid opening, in response to a telephone inquiry from the contracting officer, the cognizant state authority informed the Navy that MKB Constructors is a partnership made up of D.M. Moor and W.J. King, and that it had no

listing or registration for Beck Constructors, Koon-Boen, Inc. or Cummins-Egge, Inc. Subsequently, in response to a written request from the agency, the state reported that MKB Constructors is a partnership of D.M. Constructors, Inc., W.J. King, Inc., and Beck Constructors. It was not until November 9, nearly 2 months after bid opening, that the state informed the Navy that the bidder is a partnership comprised of D.M. Moor Constructors, Inc. and Beck Constructors. Thus, although it apparently was not accurate, the information publicly available at the time of bid opening would not have demonstrated that the bidder and the principal on the bond were the same legal entity.

In sum, the protester submitted a bid bond which created an ambiguity in the identity of the principal and the nominal bidder. The bid names MKB Constructors and was signed by "DAVID M. MOOR, J.V. PARTNER," while the bond names a joint venture comprised of Beck Constructors and D.M. Moor Constructors, Inc., neither of which is named anywhere in the bid. In addition, the street address shown on the bid is different from that shown on the bid bond, reasonably raising further doubts as to whether the principal named on the bond and the nominal bidder were the same legal entity. The contracting officer was not obligated to reconcile these ambiguities by deductions and inferences in order to make the bid responsive. Rather, bidders bear the primary responsibility for properly preparing 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. The protester failed to do so here.

The protest is denied.

Robert P. Murphy
Acting General Counsel