



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-178824

August 16, 1973

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G & C Enterprises, Inc.
Route 130
Bordentown, New Jersey 08505

Attention: Mr. William Gray
President

Gentlemen:

We are in receipt of your telegram of June 5, 1973, and subsequent letters, protesting an award being made to the apparent low bidder, Paris R. Minuto, Inc. (Minuto), under invitation for bids (IFB) No. F28609-73-B-0472, issued by the Base Procurement Office, McGuire Air Force Base, New Jersey.

The IFB sought bids for air conditioning quarters at the base. Each bidder was required to submit with its bid a bid bond in the amount of 20 percent of the bid price.

The commercial bid bond submitted by the apparent low bidder and attached to its bid, although making specific reference to the substance of the solicitation, stated that the surety would be bound to the State of New Jersey rather than to the United States Government.

Notwithstanding this deficiency the agency proposes to accept the bid bond and make award to Minuto. We agree with this course of action.

G&C contends that Minuto's bid should have been rejected since the insertion of a state rather than the United States Government as obligee rendered the bond unenforceable by the Government; the bond was not submitted on standard form (SF) 24 as required by the IFB; and, the bond as written contains material deviations from the requirements of SF 24.

Paragraph 2.404.2(h) of the Armed Services Procurement Regulation (ASPR) provides that where a bid guarantee is required and a bidder fails to furnish it in accordance with the requirements of the IFB, the bid shall be rejected (with certain exceptions not material here). However, since Minuto did furnish a bid bond the only issue is the acceptability of that bond. B-170694, December 3, 1970. Thus, the case you cite, B-169946, October 15, 1970, wherein a bidder did not furnish a bid bond, is clearly distinguishable on its facts from the present situation.

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In B-170694, supra, we held that a bid bond which noted a state rather than the United States as obligee was acceptable since the intent of both the surety and the principal to be bound upon acceptance of the bid was clearly shown by the bond itself and the identity of the United States as the intended and true obligee was likewise ascertainable from the information supplied by the bond.

As in B-170694, supra, such an intent has been presently demonstrated here. The bond correctly identifies both the principal and the bidder concerned and also correctly lists the name and location of the Federal project involved.

Moreover, B-166799, May 15, 1969, which you cite for the proposition that "Suretyship arises only by express contract of the parties and cannot be implied" is inapplicable where, as here, the surety's obligation can be established within the four corners of the bond.

We have held that even where SF 24 is clearly designated as the vehicle upon which the bid bond should be tendered, " * * * the mere failure to utilize that form is not a sufficient basis [in and of itself] to reject a bid." 39 Comp. Gen. 83 (1959). The sufficiency of a bid bond should not be judged solely on the form used but rather should be judged on whether or not the bond represents a difference in the rights and obligations of the parties from those set forth in SF 24. 39 Comp. Gen., summa. So long as the bond submitted affords the Government appropriate recourse in the event the bidder does not fulfill the conditions of the bid, it will be considered acceptable. 51 Comp. Gen. 822 (1972).

O&C contends that the bid bond written by Safeco Insurance Company of America (Safeco) for Minuto does not provide, as does SF 24, covenants which will assure that the bid requirements will be met before relieving the surety of possible liability. The Safeco bid bond identifies the principal (bidder), the procurement activity, the project for which bids were requested and provides that the surety's liability will be void:

"If said Bid shall be accepted and the Principal shall execute and deliver a contract in the form of contract attached hereto (properly completed in accordance with said Bid) and shall furnish a bond for the faithful performance of said Contract, and for the payment of all persons performing labor or furnishing materials in connection therewith, and shall in all other respects perform the agreement created by the acceptance of said Bid,"

In B-170694, supra, we held as follows:

"* * * In the instant case the intention of the surety and the principal to be bound in the amount of the bond upon acceptance of the bid specified therein, is clearly shown by the bond itself, and the identity of the United States as the intended and true obligee is likewise ascertainable from the information supplied by the bond. Under such circumstances we do not believe that the surety could successfully defend a suit by the United States on the bond. The basic law applicable to such situations appears to be stated in 11 C.J.S. Bonds, § 106(a) as 'where the name of the obligee is incorrectly stated in the bond, he may sue in his true name * * *.' See Stine v. Eximbank Bank of St. Louis, 103 S.W.(2d) 633, 135, which cited similar provisions in 9 C.J. 12, and 9 C.J. 16, and stated in resolving a somewhat comparable situation 'The only question is, Does the identity of the bank as the true obligee appear by reasonable intendment from the face of the instrument itself?'"

The foregoing is equally applicable here. Accordingly, since the bid bond of Hunte is enforceable by the Government, its bid properly may be considered for award.

Sincerely yours,

PAUL G. DEMBLING

For the Comptroller General
of the United States