

DECISION



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

FILE: B-212460

DATE: October 26, 1983

MATTER OF: Emerald Electric

DIGEST:

Where IFB requires a bid bond and bidder submits only one individual surety in support of the bid bond, agency rejection of the bid as nonresponsive is proper since a valid bid bond is a material part of the bid and Defense Acquisition Regulation § 10.201.2(b) requires that at least two individual sureties shall be provided.

Emerald Electric (Emerald) protests the rejection of its bid under invitation for bids (IFB) No. N62471-83-B-1343 issued by the Department of the Navy for family housing electrical repair projects. The Navy rejected Emerald's bid as nonresponsive because it did not include a properly executed bid bond, standard form (SF) 24, in that only one of the two required individual sureties was offered in support of the bond.

Although admitting that only one individual surety was provided, Emerald contends that, prior to bid opening, the Navy's contracts office reviewed Emerald's SF 28, Affidavit of Individual Surety, and misled Emerald into believing that a single individual surety was sufficient. Emerald indicates that the Navy accepted a similarly defective bid on a prior contract and argues that the Navy should be able to accept its present bid, considering also the monetary savings. Emerald states that it is willing to remedy the defect in its bid bond and argues that, at the very least, the circumstances warrant the issuance of a new IFB.

We deny the protest.

When required by the IFB, a valid bid bond is a material part of the bid. Baucom Janitorial Services, Inc., B-206353, April 19, 1982, 82-1 CPD 356. Where a bidder supplies a defective bid bond, the bid itself is rendered defective and must be rejected as nonresponsive.

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Atlas Contractors, Inc./Norman T. Harder, a Joint Venture, B-208332, January 19, 1983, 83-1 CPD 69. The bid bond requirement is material even though paragraph 4 of SF 22 (Instructions to Bidders) indicates only that failure to provide an adequate bid bond may be cause for rejection of the bid. A.D. Roe Company, Inc., 54 Comp. Gen. 271 (1974), 74-2 CPD 194.

The IFB (SF 24) and Defense Acquisition Regulation (DAR) § 10-201.2(b) (Defense Acquisition Circular No. 72-25, October 31, 1980) require that at least two individual sureties support a bid bond. We have indicated that a bid bond supported by one rather than two individual sureties would require the bid to be rejected as nonresponsive. Sphere Management, Inc., B-200267, May 1, 1981, 81-1 CPD 334. Accordingly, we find that the Navy acted properly in rejecting Emerald's bid as nonresponsive.

Furthermore, we find that the other allegations raised by Emerald provide no basis for relief. The Navy denies that it ever told Emerald that a single surety was sufficient. To the contrary, we note that paragraph 4(b) of SF 24 clearly states that, where individual sureties are used, there shall be two or more responsible persons. Also, if Emerald was concerned over the bonding requirement, paragraph 1 of SF 22 requires that any explanation desired by a bidder must be requested in writing and that any oral explanations or instructions given before award of the contract will not be binding. In addition, it is well established that the United States is not liable for the erroneous acts or advice of its officers, agents or employees, even if committed in the performance of their official duties. Federal Crop Insurance Corporation v. Merrill, 332 U.S. 380 (1947); A.D. Roe Company, Inc., supra. Consequently, even assuming that erroneous advice was given by the Navy, the Navy is not estopped from rejecting Emerald's bid as nonresponsive. Nor is the Navy estopped by its admitted prior erroneous actions from rejecting Emerald's instant bid as nonresponsive. Forest Scientific Inc., 58 Comp. Gen. 276 (1979), 79-1 CPD 188. The bid guarantee requirements have the force and effect of law and the Navy is legally bound to reject Emerald's bid as nonresponsive.

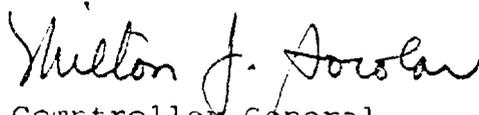
Finally, we note that Emerald's offer to rectify the deficiency cannot be considered in determining whether the bond as submitted is responsive to the solicitation. It is a settled rule that a nonresponsive bid cannot be made

responsive after bid opening through change or explanation of what was intended. Atlas Contractors, Inc., B-209446, March 24, 1983, 83-1 CPD 303.

Although rejection of Emerald's bid may result in additional cost to the government on this procurement, we have often observed that the maintenance of the integrity of the competitive bidding system is more in the government's best interest than the pecuniary advantage to be gained in a particular case. A.D. Roe Company, Inc., supra.

In view of our finding above, we find no basis to recommend that this solicitation be canceled and a new IFB issued.

The protest is denied.

for 
Comptroller General
of the United States