



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20541

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D-178796

August 8, 1973

C. A. Logeman Company, Inc.
P. O. Box 37385
San Antonio, Texas 78237

Attention: Mr. C. A. Logeman
President

Gentlemen:

Reference is made to your letter of July 13, 1973, and prior correspondence, protesting against the award of a contract to any other bidder under invitation for bids (IFB) F41613-73-09002, issued by Lackland Air Force Base, Texas.

Of six bids received, you submitted the lowest bid. The bid was submitted in the name of C. A. Logeman Co., Inc., a corporate entity, while the bid bond names the principal (bidder) as "C. A. Logeman Co, and C. A. Logeman, An Individual, and A Joint Venture" and identifies the type of organization of the principal (bidder) as a Joint Venture.

It is your contention that the disparity between the name of the principal (bidder) on the bid bond, and bid, is merely a minor technicality which should be waived. You allege that the disparity resulted from typographical and secretarial errors. In view thereof, you request permission to submit a corrected bid or clarifying affidavits.

Our prior decisions, however, have indicated that in a situation such as the instant case, such a disparity in names would render the bid nonresponsive. In 51 Comp. Gen. 836 (1972), an analogous situation, we stated:

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"Where the principal named on the bid bond was a joint venture which included a corporation that was the only entity named in the low bid, the statements and affidavits submitted after bid opening to evidence that a mistake had been made and the bidder intended to be named in bid was a joint venture, may not be accepted to make the nonresponsive bid responsive by changing the name of the bidder. An alleged mistake is proper for consideration only when the bid is responsive at the time of submission, and the bid submitted not having met the terms of the invitation for bids which required the bid guaranteed to be submitted in the proper form and amount by the time set for the opening of bids, it would not be proper to consider the reasons for the nonresponsiveness of the bid, whether due to mistake or otherwise."

A bid bond requirement is a material part of the invitation and noncompliance renders a bid nonresponsive. 38 Comp. Gen. 532 (1959). A bid bond which names a principal different from the nominal bidder is deficient and the defect may not be waived as a minor informality. B-170361, July 27, 1970; B-177890, April 4, 1973. This rule is prompted by the rule of suretyship that no one incurs a liability to pay the debts or perform a duty of another unless he expressly agrees to be bound.

In B-169369, April 7, 1970, a case you cite in support of your proposition, the principal named on the bid bond was a joint venture which included a corporation as a member, and the nominal bidder was the corporation. We held the bid to be responsive and not subject to rejection because it appeared from the information submitted with the bid that the bid was intended to be that of the joint venture. In addition to a copy of the bid bond, a copy of the "Certificate of Joint Venture with Parent Company" was submitted with the bid, clearly expressing the intention and agreement of the two affiliated companies to submit a joint bid. Since the intended bidder and the principal on the bid bond were the same legal entity, the surety was bound by the bond submitted with the bid. Such is not the case here. There is no indication in the record before us that the bidder and the principal named in the bid bond are other than distinct legal entities. The bond as submitted with the bid does not establish that the surety

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has an obligation to pay a debt of the bidder under the invitation. To establish such a relationship after the bid opening would tend to compromise the integrity of the competitive bid system and be prejudicial to other bidders.

We held in 52 Comp. Gen. 223, 225 (1972), that the determination of the sufficiency of a bid bond relates to whether the Government will receive the full and complete protection it contemplated in the event of a failure of a bidder to execute any required contractual documents or bonds. Here, the surety's liability under the bond is contingent upon the bid being in the name of the entities listed on the bid bond, i.e., "C. A. Logeman Co. and C. A. Logeman, An Individual, and A Joint Venture." Therefore, we are unable to conclude that the surety would be bound in the event of the failure of C. A. Logeman Co., Inc., to execute the contract upon acceptance of its bid.

Accordingly, it is our opinion that the procurement activity correctly determined your bid to be nonresponsive.

Sincerely yours,

PAUL G. DEMBLING

For the Comptroller General
of the United States