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| Protests of |) | |
| |) | Date: January 19, 1989 |
| S & A CONSTRUCTION COMPANY |) | |
| |) | |
| Solicitation Nos. 489986-88-A-0135 |) | P.S. Protest Nos. 88-67 |
| 489986-88-A-0139 |) | 88-79 |

DECISION

S & A Construction Company (S&A) timely protests the rejection as nonresponsive of its bids on two solicitations for new construction of postal facilities in Fort Worth, TX.

Solicitation No. 489986-88-A-0135, for the North Richland Hills Branch, was issued July 22, 1988, by the Dallas Facilities Service Office (FSO), with an offer due date of August 24. Solicitation No. 489986-88-A-0139, for the Richland Station, was issued July 25 by the Dallas FSO, with an offer due date of August 25. Both of S&A's protests raise the same issues, and we have therefore consolidated the protests for decision.

Both solicitations required that bids be accompanied by bid bonds in the amount of 20% of the amount bid. Applicable postal regulations allowed submission of bonds of individual sureties provided each bond was executed by at least two individual sureties and the bond was supported by Affidavits of Individual Surety, indicating a net worth of each surety of not less than the penal amount of the bond. Postal Contracting Manual 10-203(a); PS Form 7328, Affidavit of Individual Surety, Instruction 4. The Affidavit of Individual Surety requires execution, on the reverse, by "an officer of a bank or trust company, a judge or clerk of a court of record, a United States district attorney or commissioner, a Postmaster, a collector or deputy collector of internal revenue, or any other officer of the United States acceptable to the U.S. Postal Service" of the "Certificate of Sufficiency," certifying that the individual surety is responsible and qualified to act as surety and that the facts stated by the surety in the affidavit are true. Page 2 of PS Form 7328, Affidavit of Individual Surety.

Ten bids were received in response to Solicitation No. 489986-A-88-0135; and five in response to Solicitation No. 489982-A-88-0139. S&A submitted the apparent low bid for both solicitations, each supported by two separate bid bonds of individual sureties. Upon review of the Affidavit of Individual Surety for one of the sureties offered by S&A in both solicitations, the contracting officer determined that the signature of Marti Alter, the official who signed the Certificates of Sufficiency, was a photocopy as opposed to an original signature. By letter of September 20, 1988, the contracting officer rejected

the bids of S&A on both solicitations as nonresponsive for lack of this signature. These protests followed on September 29, 1988.

S&A alleges the same two grounds as the bases for both of its protests. First, it asserts its belief that the signature upon the Certificate of Sufficiency is original, and requests that the signature be tested to verify its "originality." Second, S&A complains that it was not given an opportunity to provide an affidavit of the signatory of the Certificate of Sufficiency adopting such facsimile, if it is, in fact, only a reproduction.

The contracting officer, in his reports, which are identical for both protests (with the exception of minor variations not pertinent to the resolution of these protests), states that the Certificate of Sufficiency was submitted to the Inspection Service Criminal Laboratory in Memphis for analysis to determine whether the signature is original. By memorandum dated November 8, the contracting officer reported to this office and to the protester, concerning both solicitations, the determination of the Inspection Service Crime Laboratory that the signature is not original, but an electrostatic reproduction. A copy of the Inspection Service's conclusion was attached to his memorandum. In addition, the contracting officer asserts that, subsequent to his determination of the nonresponsiveness of the protester, the official who signed the Certificate of Sufficiency advised that she could not certify at that time regarding the individual surety's responsibility and that she had not signed a Certificate of Sufficiency for that individual subsequent to June 1988.

The contracting officer, in his report for each protest, recites the basis for rejection of the bid, as set forth in his letter of September 20, as follows:

The Bid Bond was insufficient because the bond instructions and regulations require that they have a signature of an officer of a bank or trust company, a judge or clerk of a court of record, a U.S. district attorney or commissioner, a postmaster, a collector or deputy collector of internal revenue, etc. which shows the financial condition and worth of the Surety. This was furnished, but not with an original signature, rather a facsimile of a signature. Facsimile signatures are not acceptable for bid requirements unless they are accompanied by a separate written instruction from the signatory that adopts the facsimile as an official signature. A separate written instruction from the signatory was not presented at the time of bid opening.

Discussion

The determination by the Inspection Service Crime Laboratory that the signature of Marti Alter on the Certificate of Sufficiency, was electrostatically reproduced is dispositive of the protester's assertion that that signature is original. The protester has not challenged that determination. That finding, however, does not require rejection of S&A's bid.

It is well established that a bid is considered responsive if it is an offer to perform the exact thing called for in the solicitation, and, upon acceptance, the bidder is obliged to perform in accordance with the solicitation's material terms and conditions. Toledo Scale Corporation, P.S. Protest No. 87-127, December 11, 1987; Southwood Builders, Inc., Protest No. 87-44, June 3, 1987; see also O.V. Campbell & Sons Industries, Inc., Comp. Gen. Dec. B-229555, March 14, 1988, 88-1 CPD & 259. Further, a proper bid bond is an element of responsiveness. Vanessa Sutton Construction Co., P.S. Protest No. 88-56, October 4, 1988; Luther Benjamin & Associates, P.S. Protest No. 87-99, December 31, 1987; Porter Contracting Co., Inc., P.S. Protest No. 87-82, October 23, 1987. Thus, a bid is responsive only if the surety on a required bid bond is clearly bound by the bond's terms.

The Comptroller General sets forth a test, with which we agree, for determining the propriety of a bid bond supported by individual sureties:

A completed [bid bond] is proper "on its face" when it has been duly executed by two individual sureties (whose affidavits indicate that, subject to further investigation, they both have net worth's at least equal to the penal amount of the bond), and the completed [bid bond] contains no obvious facial defects, such as the omission of the penal amount, or the markup or alteration of the bond without evidence of surety approval.

O.V. Campbell & Sons Industries, Inc., *supra*, at 2-3 (Citations omitted). S&A's bid bond is proper under the above-quoted test.^{1/}

The contracting officer rejected S&A's bids because of a deficiency in the completion of its Form 7328, Affidavit of Individual Surety; to wit, a non-original signature on the Certificate of Sufficiency on the reverse of the Affidavit of Individual Surety. However, the Affidavit of Individual Surety is separate from the bid bond and "serves solely as an aid in determining the responsibility of an individual surety." O.V. Campbell & Sons Industries, Inc., *supra*, at 3; see also River Equipment Company, Inc., Comp. Gen. Dec. B-227066, July 24, 1987, 87-2 CPD & 84; Hispanic Maintenance Service, Comp. Gen.

^{1/}Two separate bonds supported by individual sureties, instead of one bond signed by both sureties, were submitted. Both bonds are in the correct penal amount, and the individual sureties have completed the appropriate Affidavit of Individual Surety. Although both sureties did not sign the same bond, the Postal Service is not prejudiced.

Dec. B-218199, April 22, 1985, 85-1 CPD & 461. Thus, the contracting officer erred in determining that S&A's bids were nonresponsive because of the failure to have an original signature in the "Certificate of Sufficiency" portion of Form 7328, Affidavit of Individual Surety.

Accordingly, the contracting officer should "determine the acceptability of individuals proposed as sureties" for S&A's bid bonds, as mandated by Postal Contracting Manual 10-204(a). The contracting officer may seek information beyond the Affidavit of Individual Surety, including allowing S&A to obtain affirmation of the signature by Ms. Alter on the Certificate, to determine the acceptability of the proposed surety.^{1/} See Transcontinental Enterprises, Inc., Comp. Gen. Dec. B-225802, July 1, 1987, 87-2 CPD & 3. We remand the determination of the acceptability of the individual sureties to the contracting officer.

The protests are sustained.

[Norman Menegat for:]
William J. Jones
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Office of Contracts and Property Law

[checked against original JLS 3/4/93]

^{2/}An additional factor for consideration in establishing the responsibility of the individual sureties is the statement of the signatory of the Certificate of Sufficiency, subsequent to bid opening, that she could not certify at that time to the individual surety's responsibility. The time for the determination of the acceptability of the surety is the time of award, not the time of bid opening. See Professional Coatings--Reconsideration, Comp. Gen. Dec. B-224222.2, March 4, 1987, 87-1 CPD & 244 Clear Thru Maintenance, Inc., 61 Comp. Gen. 456 (1962).