



Decision

Matter of: Mill City Partnership

File: B-400712

Date: December 16, 2008

Richard E. Briansky, Esq., Prince, Lobel, Glovsky & Tye, for the protester.
Gary J. Campbell, Esq., McCarter & English, LLP, for the intervenor.
Madeline Shay, Esq., Corps of Engineers, for the agency.
Cherie Owen, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Bid of a joint venture, which submitted a bid bond in the name of only one of the corporations forming the joint venture, was properly rejected by the agency as nonresponsive.

DECISION

Mill City Partnership of Lowell, Massachusetts protests the rejection of its bid under invitation for bids (IFB) No. W912WJ-08-B-0006, issued by the Army Corps of Engineers, for environmental restoration of the Mill River and Mill Pond in Stamford, Connecticut. The Corps determined that Mill City Partnership's bid was nonresponsive because there was a discrepancy between the legal entity shown on the bid and the legal entity shown on the bid bond.

We deny the protest.

The IFB, issued on August 11, 2008, required a bid guarantee in the form of a bid bond in the amount of 20 percent of the bid. Mill City Partnership, the apparent low bidder at \$5,678,625, identified itself in the bid forms alternately as Mill City Environmental Corp. (MCE), or Mill City Environmental Corp. w/ Teaming Partner C.R.C. Co., Inc. (Mill City Partnership).¹ Agency Report (AR) Tab 13.

¹ While the bid contains conflicting statements as to whether the bid was submitted by MCE or Mill City Partnership (see Contracting Officer's Statement at 3), it is
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The accompanying bid bond identified its principal as C.R.C. Company, Inc. AR, Tab 13, at 13. The principal was identified as a “corporation” under the “Type of Organization” section of the bid bond. Id. The signature block on the bond contained the signature of CRC’s president. Id.

By letter dated September 29, the contracting officer notified Mill City that its bid was nonresponsive because of a deficiency in its bid bond. AR, Tab 7. The Corps awarded the contract to the next low bidder, Green Seal Environmental, Inc., at \$5,793,221.45. Contracting Officer’s Statement at 2.

The sufficiency of a bid bond relates to whether the government will receive full and complete protection in the event that the bidder fails to execute the required contract documents and deliver the required performance and payment bonds. Martina Enter./Tom Swenson Gen. Contractors, B-250766, Oct. 21, 1992, 92-2 CPD ¶ 266 at 2 (holding that the bid of a joint venture, which submitted a bid bond in the name of only one of the corporations forming the joint venture, is nonresponsive). Among other things, the terms of the bid bond must clearly establish the liability of the surety at the time of bid opening; when the liability is not clear, the bond is defective. Design for Health, Inc., B-239730, Sept. 14, 1990, 90-2 CPD ¶ 213 at 3. A surety does not incur a liability to pay the debts of another unless he expressly agrees to be bound. Mount Diablo Corp., Inc., B-228193, Nov. 10, 1987, 87-2 CPD ¶ 475 at 2. For this reason, the principal listed on the bid bond must be the same legal entity as the nominal bidder. Reliable Elec. Constr., Inc., B-250092, Sept. 23, 1992, 92-2 CPD ¶ 198 at 2. If the bid bond names a principal different from the nominal bidder, it is deficient and may not be corrected after bid opening as a minor informality. Atlas Contractors, Inc./Norman T. Hardee, a Joint Venture, B-208332, Jan. 19, 1983, 83-1 CPD ¶ 69 at 3.

In the present case, the surety’s liability under the bid bond is contingent upon the bid being in the name of the corporation listed on the bid bond, i.e., “C.R.C. Company, Inc.” While it is not clear here whether the bidder was MCE or Mill City Partnership, it is clear that the nominal bidder was not “C.R.C. Company, Inc.” Thus

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unnecessary for us to resolve this issue here because, in either case, the bid was nonresponsive.

we agree with the contracting officer that it is unclear that the surety would necessarily be bound in the event that the joint venture failed to execute the contract upon acceptance of its bid or declined to furnish acceptable performance or payment bonds.²

The protest is denied.

Gary L. Kepplinger
General Counsel

² The agency also questions whether the protester, Mill City Partnership, qualifies as a small business concern. Again, this question is academic if the bid is nonresponsive for lack of an adequate bid guarantee and, in any event, as the Corps recognizes, would be a matter to be resolved by the Small Business Administration and not our Office.