

Protest of )  
VANESSA SUTTON CONSTRUCTION CO. ) Date: October 4, 1988  
Solicitation No. 129986-88-A-0016 ) P.S. Protest No. 88-56

### DECISION

Vanessa Sutton Construction Co. (Sutton) timely protests the contracting officer's determination that its apparent low bid on Invitation For Bids (IFB) 129986-88-A-0016 was nonresponsive.

IFB No. 129986-88-A-0016, issued May 10, 1988, by the Facilities Service Office, Atlanta, GA, sought bids for minor alterations, repairs and maintenance work to be performed at postal facilities located throughout southern Georgia. The IFB required that bids be accompanied by a bid bond in the amount of \$20,000 and included a blank PS Form 7324, Bid Bond, for the bidder's use. The instructions on the reverse of that form, in paragraph 4(b), provided:

Where individual sureties execute the bond, they shall be two or more responsible persons. A completed Affidavit of Individual Surety (PS Form 7328), for each individual surety, shall accompany the bond. Such sureties may be required to furnish additional substantiating information concerning their assets and financial capability as the Postal Service may require.

When bids were opened June 1, Sutton's bid was the lowest of four received. It included a bid bond on PS Form 7324 which was executed by one individual surety.

After bid opening, the contracting officer discovered, upon checking with the General Services Administration (GSA), one of Sutton's listed references, that Sutton's individual surety failed to disclose all other bonds on which she was a surety at the time she executed the bid guarantee for Sutton. This disclosure was required by item 10 of the Affidavit of Individual Surety. Sutton's surety entered the word "none" under item 10 on her Affidavit. By letter dated August 19, 1988, the contracting officer rejected Sutton's bid as nonresponsive on the basis that its surety failed to disclose outstanding bond obligations and thus was unacceptable. This protest followed on August 31, 1988.

The protester argues that given the amounts of the GSA bonds, \$6,250.00 and \$12,500.00, one can only view the surety's failure to list the bonds on the affidavit as a

"mere oversight." The protester further argues that the matter is easily rectified, and that neither Sutton nor the surety intended to mislead the Postal Service. Had the omission been intentional, Sutton contends it would not have listed the GSA as a reference. Sutton alleges that the contracting officer fails to address the financial capability of the surety, arguing that "the crucial question about any bond is whether the surety has sufficient assets to guarantee its payment." Sutton contends that had the contracting officer reviewed the surety's assets he would have discovered that they were adequate to cover both the Postal Service and GSA bonds.

In his report to this office, the contracting officer contends that Sutton's failure to list outstanding bond obligations was a misrepresentation. To support this contention, he argues that the GSA and Postal Service bonds were executed May 10, 1988, and June 1, 1988, respectively; too close in time to have been unintentionally omitted. The contracting officer also claims that the GSA was given as a reference only after he advised Sutton that he questioned its experience to perform this contract. He asserts that Postal Contracting Manual (PCM) 10-103.4, "Failure to Submit Proper Bid Guarantee," requires that the bid be rejected as nonresponsive, since Sutton submitted an insufficient bid bond.

### Discussion

When required by the IFB, a bid bond is a material part of a bid. Baucom Janitorial Service, Inc., Comp. Gen. Dec. B-206353, April 19, 1982, 82-1 CPD & 356; Emerald Electric, Comp. Gen. Dec. B-212460, October 26, 1983, 83-2 CPD & 505. When a bidder supplies a defective bond, the bid itself is rendered defective and must be rejected as nonresponsive. Atlas Contractors, Inc., Comp. Gen. Dec. B-209446, March 24, 1983, 83-1 CPD & 303; Hancon Associates -- Request for Reconsideration, Comp. Gen. Dec. B-209446.2, April 29, 1983, 83-1 CPD & 460; see Luther Benjamin and Associates, P.S. Protest No. 87-99, December 31, 1987; Porter Contracting Co., Inc., P.S. Protest No. 87-82, October 23, 1987.

Here, the instructions on the bid guarantee form and PCM 10-203(a) require that at least two individual sureties support a bid bond. A bid bond supported by one rather than two individual sureties must be rejected as nonresponsive. Emerald Electric, *supra*; see Sphere Management, Inc., Comp. Gen. Dec. B-200267, May 1, 1981, 81-1 CPD & 334.

For the reasons stated herein, we find that the contracting officer acted properly when he rejected Sutton's bid as nonresponsive, even though we do not rely on the same grounds.<sup>1/</sup> Further, since the protester's bid has been found to be nonresponsive, this

<sup>1/</sup>The Comptroller General has held that a bid cannot be rejected as nonresponsive solely on the basis that the surety's affidavit which accompanied the bid bond contained false information regarding the surety's worth. CWC Inc., Comp. Gen. Dec. B-209383, October 19, 1982, 82-2 CPD & 347. Where there is a continuing pattern among certain individual bid bond sureties not to disclose outstanding bond obligations on the affidavit, a contracting officer has a reasonable basis to reject the bidder's sureties as unacceptable. Dan's Janitorial Service, Inc., Comp. Gen. Dec. B-205823, B-205843, B-206469, September 9, 1982, 82-2 CPD & 217, but the contracting officer presented no evidence indicating a pattern by Sutton's surety of not disclosing outstanding bond obligations.

office need not address the issues involving the financial capability of the individual surety.

The protest is denied.

**[MichaelVandamm for:]**

William J. Jones

Associate General Counsel

Office of Contracts and Property Law

**[checked against original JLS 3/3/93]**