

**DECISION**

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

26112

FILE: B-211259

DATE: August 29, 1983

MATTER OF: Singleton Contracting Corporation

**DIGEST:**

1. Protester which submitted late bid is an interested party where it protests that both timely bids should have been determined nonresponsive for failure to submit a bid guarantee as required by the invitation for bids since a determination of nonresponsiveness would have necessitated cancellation of the solicitation and a resolicitation, in which case the protester would be able to compete.
2. Where both bids timely received were nonresponsive for failure to provide a bid guarantee, the procuring agency properly accepted the low bid notwithstanding that it was technically nonresponsive where acceptance resulted in a contract which would satisfy the Government's actual needs and would not result in prejudice to the only other bidder.

Singleton Contracting Corporation (Singleton) protests the award of a contract under invitation for bids (IFB) 83-04 issued by the Federal Communications Commission (FCC) to L.J. Construction (L.J.) for construction of a darkroom.

We deny the protest.

The time and date for receipt of bids was 2 p.m. on February 14, 1983, at which time the bids of L.J. and Fidelity Construction Company (Fidelity) were received. Neither of these bids contained a bid bond in the amount of 20 percent of the bid as required by the IFB. Singleton's bid, which included a bid bond in the amount of 20 percent of its bid, was not received until February 15, 1983. The FCC returned Singleton's bid unopened to Singleton because the bid was received 1 day late. The FCC then found L.J.'s bid to be low and awarded the contract to L.J.

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Singleton contends that both the bids of L.J. and Fidelity should have been rejected as nonresponsive because they were unaccompanied by a bid bond as required by the IFB. Singleton further argues that because both timely bids should have been rejected as nonresponsive and because its late bid was accompanied by a bid bond, the project should be resolicited.

The FCC first contends that Singleton is not an interested party which may protest to GAO because its bid was received late and was sent to an address other than the one listed in the IFB. Under our Bid Protest Procedures, a party must be "interested" before we will consider its protest allegations. 4 C.F.R. § 21.1(a) (1983). Whether a party is sufficiently interested depends upon the degree to which its interest in the outcome is both established and direct. In general, we will not consider a party's interest to be sufficient where that party would not be eligible for award, even if the issues raised were resolved in its favor. Anderson Hickey Company, B-210252, March 8, 1983, 83-1 CPD 235.

Singleton's protest generally challenges the propriety of the FCC's determination that the two timely bids were responsive. Should the FCC's determination that the two timely bids were responsive be found improper, then there would be no responsive bids, necessitating cancellation of the IFB and resolicitation. Upon resolicitation, Singleton would be eligible to bid. Since Singleton has demonstrated its interest in competing for this procurement by submitting a bid, albeit late, and since it would be eligible to compete for an award under a resolicitation if its protest is sustained, it is an interested party.

The FCC also contends that since the two timely bids were under \$25,000, it was justified in waiving the requirement in the IFB for a bid bond under Federal Procurement Regulations (FPR) § 1-10.103-4 (1964 ed. amend. 200).

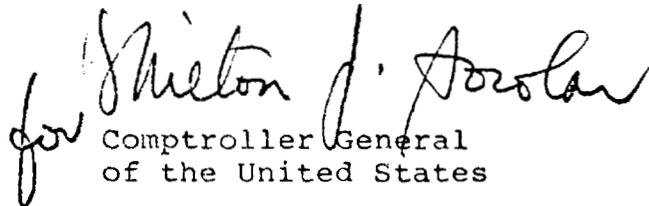
This Office has consistently held that where a bid guarantee is required as part of a bid, the failure to provide a guarantee renders the bid nonresponsive, Pacific Consolidated Services, Inc., B-204781, March 10, 1982, 82-1 CPD 223, even if the bid is under \$25,000. See Pine Street Corp., B-210599, February 17, 1983, 83-1 CPD 168.

Generally, that failure cannot be waived or excused unless one of the limited exceptions in FPR § 1-10.103-4 applies.

While we find that the exceptions in FPR § 1-10.103-4 do not apply here, we have held that where all bids timely received are nonresponsive for the same reason and acceptance of the low nonresponsive bid would result in a contract which would satisfy the Government's actual needs, the procuring agency may accept the low bid notwithstanding that it was technically nonresponsive. See George Hyman Construction Company; Blake Construction Company, Inc., B-188603, June 15, 1977, 77-1 CPD 429; 45 Comp. Gen. 849 (1966). Acceptance of the low nonresponsive bid in such circumstances will not result in prejudice to the only other bidder.

Acceptance of L.J.'s bid resulted in a contract which will satisfy the FCC's requirements since the bid took no exception to the work required under the solicitation and L.J. is obligated to perform the contract as called for therein and the FCC determined that the bid bond was not necessary. Further, since Fidelity's bid was also nonresponsive for failure to provide a bid guarantee, it was not prejudiced by acceptance of L.J.'s nonresponsive bid. Singleton was not prejudiced since it did not submit a timely bid. Thus, we think that waiver of the bid bond requirement was proper in this situation.

Accordingly, the protest is denied.

*for*   
Comptroller General  
of the United States