

**DECISION**

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

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**FILE:** B-216845 **DATE:** April 22, 1985  
**MATTER OF:** Nationwide Roofing and Sheet Metal, Inc.

**DIGEST:**

1. Use of bid bond form other than required Standard Form 24 is not objectionable where intent of surety and principal to be bound and identity of United States as intended and true obligee is clearly shown by bond itself. Contrary interpretation of regulation by protester is inconsistent with underlying concept of responsiveness, rejected.
2. Where applicable federal law exists, GAO will not look to state law to determine the validity of a bid bond submitted for a federal procurement.

Nationwide Roofing and Sheet Metal, Inc. (Nationwide), protests the termination for the convenience of the government of the contract awarded it under Wright-Patterson Air Force Base invitation for bids (IFB) No. F33601-84-B-9094 and the subsequent award of the contract to the low bidder, ABCO Roofing & Sheet Metal, Inc. (ABCO), whose bid had been originally found to be nonresponsive. Nationwide requests that the contract be reawarded to itself.

We deny the protest.

The contracting agency originally found the ABCO bid to be nonresponsive because ABCO submitted the required bid guarantee on United States Postal Service (USPS) Bid Bond Form 7324 rather than the General Services Administration (GSA) Standard Form 24 (SF-24) specified in the IFB. The USPS form stated that ABCO and its surety were liable to the "United States Postal Service" rather than to the "United States Government," as would have been the case had ABCO submitted the SF-24. The contracting agency subsequently reversed its opinion

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on the basis of our decisions B-170694, December 3, 1970, and B-178824, August 16, 1973, in which our Office held, in factual situations similar to the one here, that the defect was not sufficient to render a bid nonresponsive.

The Nationwide protest is basically twofold. First, Nationwide contends that finding the ABCO bid to be responsive is inconsistent with the two cited decisions of our Office. In this regard, Nationwide points out that the regulation (paragraph 10-102.5 of the Armed Services Procurement Regulation) then in effect stated that ". . . noncompliance with a solicitation requirement that the bid be supported by a bid guarantee will require rejection of the bid . . .," whereas this procurement is governed by the Federal Acquisition Regulation (FAR), 48 C.F.R. § 28-101.4 (1984), which states that "Noncompliance with a solicitation requirement for a bid guarantee requires rejection of the bid. . . ." Nationwide asserts that the latter provision mandates bid rejection for failure to comply strictly with any solicitation requirement regarding bid guarantees. Thus, Nationwide contends, the ABCO bid was nonresponsive because it was not submitted on the specified form. Second, Nationwide contends that the controlling law is that of the state in which contract formation occurred. The state law involved here, Nationwide asserts, requires finding the ABCO bid to be nonresponsive.

As a threshold matter, we do not agree with Nationwide's assertion that state law governs this matter. The general rule is that the validity and construction of contracts of the United States and their consequences on the rights and obligations of the parties present questions of federal law not controlled by the law of any state. R.H. Pines Corp., 54 Comp. Gen. 527 (1974), 74-2 CPD ¶ 385, and cases cited therein. While we have looked to state law in our consideration of complaints involving procurements conducted by state and private grantees under federal grants, see, e.g., Bradford National Corp., B-198117, Jan. 6, 1981, 81-1 CPD ¶ 5, in considering protests against direct federal procurements, such as this one, we view federal statutes, regulations, contract terms and decisions, including the decisions of this Office, as applicable federal law, and look to state law for guidance only in the absence of a source of federal law. See, e.g., HLI Lordship Industries, Inc., B-197847, Aug. 4, 1981, 81-2 CPD ¶ 88. In our judgment, the FAR and our decisions provide the proper basis for consideration of this matter.

Contrary to Nationwide's view, we interpret the current language of the FAR pertaining to solicitation bond requirements as little more than a restatement of the predecessor requirement. The position which Nationwide advocates would lead to the rejection of legally binding--and therefore responsive--bonds solely for matters of form without regard to their legal sufficiency. In our opinion, this would be inconsistent with the underlying concept of responsiveness, i.e., whether the bid is a binding offer to do or deliver the thing called for in accordance with the terms of the solicitation, see, e.g., Astronautics Corporation of America, B-216014, Dec. 13, 1984, 84-2 CPD 663; Lamari Electric Co., B-216397, Dec. 21, 1984, 84-2 CPD ¶ 689, and must be rejected.

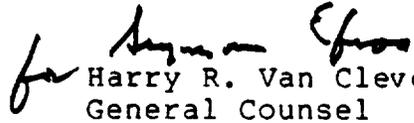
Moreover, we believe that the contracting agency's application of our decisions to this procurement was correct. In each of the two decisions on which the agency relied (see also Perkin-Elmer, 63 Comp. Gen. 529 (1984), 84-2 CPD ¶ 158), the bidder used a bid bond which listed a state rather than the United States as the obligee of the principal and surety. We held that while the bid bond did not list the United States as the obligee, it identified the correct principal, the correct location and type of work to be done, the correct invitation for bids, and was in all other respects identical to SF 24. Thus, since the intention of the surety and the principal to be bound by the bond and the identity of the United States as the intended and true obligee were clearly shown by the bond itself, we did not believe that the surety could successfully defend a suit by the United States on the bond. Consequently, we concluded that the bid bond was enforceable as submitted.

In this case, USPS bid bond form 7324 is the same as SF-24, with the exception of the name of the obligee. The bid bond submitted by ABCO on this form identified the correct principal, the correct location of and type of work to be done, and the correct IFB number of the contracting agency. We therefore believe that the surety would be bound by the bond and, consequently, that the ABCO bid was responsive.

Nationwide states that, should we rule against its request to be reawarded the contract, the procurement should be recompeted since the Nationwide contract was awarded during the 1984 fiscal year and no award in fiscal year 1985 could be made under the original solicitation to

any party other than Nationwide without violating funding limitation statutes. The contracting agency has advised that under the terms of the invitation for bids, either fiscal year 1984 or fiscal year 1985 funds may be utilized. Nationwide does not contest this nor does it explain why a second award using fiscal year 1985 funds would, in view of the invitation provision, be improper.

Accordingly, the protest is denied.

*for*   
Harry R. Van Cleve  
General Counsel