



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: BPOA Industrial Painters
File: B-231671
Date: September 23, 1988

DIGEST

Solicitation properly requires a bid guarantee where the minimum amount of work to be ordered under construction contract for repairs to and painting of government housing exceeds \$25,000, since under the Miller Act, the awardee must furnish performance and payment bonds, and by regulation bid guarantee is mandatory where those types of bonds are required.

DECISION

BPOA Industrial Painters protests the requirement for a bid bond in invitation for bids (IFB) No. F04612-88-B-0013, issued by the Air Force as a construction-type solicitation for repairs to and painting of the exterior of military family housing at Mather Air Force Base, California.

We deny the protest.

The protester contends that a bond should not be required for the work called for by this solicitation, and that the effect of this requirement is to foreclose to the protester the "right to bid and obtain a contract . . . and function as a contractor," which, in the protester's view, was not the intent of the law authorizing bid bonds.

The fact that the protester is unable to obtain a bid bond does not make that requirement improper if it is otherwise appropriate. In order to protect the United States and all persons supplying labor and materials under contracts for the construction, alteration or repair of any government building, the Miller Act (40 U.S.C. §§ 270a-270f (1982 and Supp. IV 1986)) requires that the contract awardee furnish performance and payment bonds for all contracts which exceed \$25,000 in amount. Federal Acquisition Regulation

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(FAR) § 28.102-1 (FAC 84-26); see Sovereign Electric Co.--
Request for Reconsideration, B-214699.2, Feb. 12, 1985, 85-1
CPD ¶ 183. The use of a bid guarantee is mandatory where,
as here, performance and payment bonds are required. FAR
§ 28.101-1 (FAC 84-12); Granville Construction Corp.,
B-230124, Feb. 9, 1988, 88-1 CPD ¶ 130.

Since, according to the solicitation, the minimum amount of
work to be ordered under the resulting contract, which
includes repairs to government buildings, is well in excess
of \$25,000, the solicitation properly requires a bid bond.

The protest is denied.

for 
James F. Hinchman
General Counsel