



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Simone Construction Group

File: B-233012

Date: October 17, 1988

DIGEST

Bidder's offer, after bid opening, to cure unacceptability of individual sureties by submission of an additional surety was properly rejected by contracting officer as tantamount to substitution of sureties.

DECISION

Simone Construction Group protests award to any other bidder under invitation for bids (IFB) F04604-88-B-0027 issued by Castle Air Force Base, California for the construction of a commissary facility. Simone contends that the contracting officer erred by rejecting its offer of an additional individual surety.

We dismiss the protest without requiring the submission of an agency report, pursuant to our Bid Protest Regulations, 4 C.F.R. § 21.3(m) (1988), because the information submitted shows the protest lacks merit.

Simone submitted two individual sureties to satisfy the bid payment and performance bond requirements of the IFB. When the contracting officer notified Simone that it was investigating the acceptability of those sureties, Simone responded with the offer of a third surety to be jointly and severally responsible to the government in addition to the original sureties. The contracting officer rejected this offer and has informally advised our Office that the original individual sureties of both Simone and the second low bidder were found unacceptable. Consequently, the contract was awarded to the third low bidder.

The question of the financial acceptability of a surety is a matter of responsibility and in making a determination of responsibility the contracting officer is vested with a wide degree of discretion and business judgment; absent bad

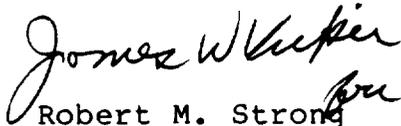
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faith or the lack of any reasonable basis for his determination, it is left to the contracting officer to decide what specific financial qualifications to consider in determining responsibility. Nova International, Inc., B-227696, Sept. 21, 1987, 87-2 CPD ¶ 284.

Simone apparently does not challenge the contracting officer's decision on the acceptability of its original sureties. Instead, it contends that it should have been allowed to add an additional surety to cure any shortcomings of those original sureties.

Simone's attempt to add a third surety, when the original sureties were lacking, would require the government to look to the new surety for payment under the applicable bonds. This would be tantamount to the replacement of the initial sureties with the new surety, which is not allowed after bid opening. See Clear Thru Maintenance, Inc., 61 Comp. Gen. 456 (1982), 82-1 CPD ¶ 581; Dunbar & Sullivan Dredging Co., B-232416, Sept. 29, 1988, 88-2 CPD ¶ _____. Such a substitution would, in substance, replace the liability of unacceptable sureties with the liability of a new surety at the post bid opening discretion of the bidder who could elect to qualify or not qualify for the contract. Accordingly, we agree with the agency's refusal to permit, in effect, a surety substitution as proposed in this case.

The protest is dismissed.



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Associate General Counsel