



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Southern California Engineering Co., Inc.

File: B-232390

Date: October 25, 1988

DIGEST

1. Where bidder submits bid bond containing signatures of individual sureties photocopied on bid form prior to completion of the form, contracting officer properly rejected bid as nonresponsive because the bid bond is of questionable enforceability.
2. Protester alleging bias on the part of procurement officials must submit virtually irrefutable proof that contracting officials had a specific and malicious intent to harm the protester, since contracting officials are presumed to act in good faith.

DECISION

Southern California Engineering Company, Inc. (SCE), protests the rejection of its bid under invitation for bids (IFB) No. NAS10-0032-8, issued by the National Aeronautics and Space Administration (NASA), for construction of a high energy x-ray facility. NASA rejected SCE's bid as non-responsive because it was not accompanied by a properly executed bid bond.

We deny the protest.

The IFB required the submission of a bid guarantee in the amount of 20 percent of the bid price, or \$3 million, whichever is less. Bids were opened on July 19, 1988. The low bidder at \$1,648,541 alleged a mistake and was permitted to withdraw its bid. SCE, the next low bidder at \$1,859,000, provided a bid bond on a standard form (SF) 24, Bid Bond, with photocopied signatures. The contracting officer determined that after the SF 24 was signed and photocopied, blank spaces were completed with the following information: (1) "6 July 1988" was entered under Date Bond Executed, (2) "13 July 1988" was entered under Bid Date, and (3) "10-0032-8" was entered under Invitation Number. By

043650/137148

letter dated August 12, the contracting officer notified SCE that its bid was nonresponsive, stating that "since the essential information was added after the signatures were photocopied, there is no evidence that the signatories intended to be bound to the obligation subsequently identified."

SCE protests that the bid bond was properly executed and that SCE has been granted authority from the individual sureties to complete the blank bond forms as necessary. SCE submits as evidence of its authority a letter dated August 15 from its sureties indicating their authorization for SCE's Assistant Secretary to complete the bid bond. SCE alleges that NASA has applied different standards to other bidders in previous procurements with respect to bid bond requirements, and is rejecting its bid because of bias arising from prior litigation between NASA and SCE's Assistant Secretary. Finally, SCE maintains that awarding a contract to the next high bidder at \$1,943,000 wastes taxpayer money.

The determinative question in judging the sufficiency of a bid guarantee is whether it could be enforced if the bidder subsequently fails to execute required contract documents and to provide performance and payment bonds. See The King Co., B-228489, Oct. 30, 1987, 87-2 CPD ¶ 423. For the bid guarantee to be enforceable, the surety must be clearly bound by information in the hands of the contracting officer at the time of bid opening. Imperial Maintenance, Inc., B-224257, Jan. 28, 1987, 87-1 CPD ¶ 34. Here, SCE's use of a bid bond containing signatures of individual sureties reproduced on the bid form prior to completion of the form creates serious doubt about the liability of the sureties. The sureties could argue after bid opening that they never agreed to bond SCE for this contract, and that the bonding document was executed without their knowledge. Since the liability of the sureties is not clear, NASA properly regarded the bid guarantee as defective. Id; Richard D. Orson, B-208435, Nov. 15, 1982, 82-2 CPD ¶ 441.

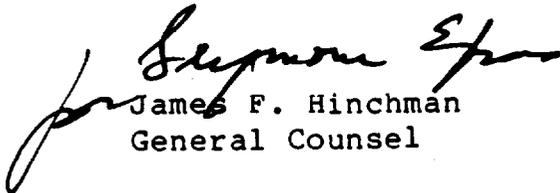
SCE's submission of its sureties' August 15 letter which indicates the sureties intended to be bound cannot be considered, since a nonresponsive bid cannot be made responsive by actions taken after bid opening. When required, a bid guarantee is a material part of a bid and must, therefore, be furnished with the bid. Imperial Maintenance, Inc., B-224257, supra.

With regard to SCE's allegation that NASA's rejection of its bid was based on NASA's bias against SCE's Assistant Secretary, where a protester alleges that procurement

officials acted intentionally to preclude the protester from receiving the award, the protester must submit virtually irrefutable proof that contracting officials had a specific and malicious intent to harm the protester, since contracting officials are presumed to act in good faith. Micronics, Inc., B-228404, Feb. 23, 1988, 88-1 CPD ¶ 185. SCE has presented no such proof. NASA's alleged disparate actions in prior procurements are not evidence that it did not act in good faith in this procurement. Id.

Finally, although acceptance of SCE's bid might result in a monetary savings to the government, we have often observed that maintaining the integrity of the competitive bidding system is more in the government's best interest than the savings to be obtained by acceptance of a nonresponsive bid. Daniel R. Hinkle, B-220163, Dec. 9, 1985, 85-2 CPD ¶ 639.

The protest is denied.


James F. Hinchman
General Counsel